United States Court of Appeals

for the Second Circuit

APPENDIX

ORIGINAL

76-1312

B P/S

United States Court of Appeals

For the Second Circuit

Docket No. 76-1312

UNITED STATES OF AMERICA,

Appellee,

against

MARVIN D. CRISTENFELD,

Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

JOINT APPENDIX

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UNITED STATES COURT OF APPEALS
FILED
AUG 9 1976
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

PAGINATION AS IN ORIGINAL COPY

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DISTRICT COURT — CRIMINAL DOCKET

JUDGE/MAGISTRATE: 207 District / 1 Office — Assigned Trial: 0716 — Disp./Sentence

• U.S. vs. MARVIN D. CRISTENFELD — 75 CR 896 — 1 defendant

Case Filed: Day 25, Mo. 11 — No. of Defdts. 1

Docket No. 75 896 — JUDD, J.

CHARGES

U.S. CODE SECTION: 18-371, 1951, 1952; 26-7206(2)

OFFENSES: Interference with commerce by extortion or transportation in aid of racketeering enterprises, etc. (collection of taxes and filing of false documents with IRS)

COUNTS: 8

MAGR. CASE NO.

BAIL • RELEASE: Denied; Personal Rec.; Unsecured; AMT; Conditional Rele.; ($ 500); 10%; Surety; Collat.; Bail Not Made; 3rd Pa.; Bail Status Changed (See Docket); Custo.; PSA

ATTYS

U.S. Attorney or Asst.: Kenneth Kaplan

Defense: CJA, X Ret.; Waived, Self, None, Other, PD, CD

Michael Gillen
233 Broadway, NYC.10007
964-1400

	ARRAIGNMENT	TRIAL	SENTENCE
	11-25-75	Trial Set For: 12-4-75	Voir Dire:
	12-4-75	X Not Guilty	Trial Began: 4/19/76
	3/3/76	Guilty / Nolo / Not Guilty	Trial Ended: 4/28/76

Disposition: X Convicted; On Alf.; Acquitted; On Lesser Offense; Dismissed: WOP; Nolled/Discontinued

		DATE	INITIAL/No.	INITIAL APPEARANCE	INITIAL/No.
Search Warrant	Issued			PRELIMINARY EXAMINATION OR REMOVAL HEARING: Date Scheduled; Date Held	
	Return				
Summons	Issued			Waived / Not Waived; Intervening Indictment	
	Served				
Arrest Warrant				Tape No.	INITIAL/No.
COMPLAINT					
OFFENSE (In Complaint)					

OUTCOME: Dismissed; Held for District GJ; BOND: Exonerate; To Trans. District; Held to Answer to U. S. District Court; AT:; Magistrate's Initials

• Show last names and suffix numbers of other defendants on same indictment/information

DATE	PROCEEDINGS	V. Excludable Del. (a)	(b)	(c)
11-25-75	Before COSTANTINO J - Indictment filed			
12-4-75	Govts Notice of Readiness for Trial filed			
12-4-75	Notice of Appearance filed.			
12-4-75	Before JUDD, J - case called - deft & counsel M.Gillen present - deft arraigned and enters a plea of not guilty - deft released on O.R. case adjd to 1-9-76 for motions and to 4-19-76 for trial.			
1/2/76	Notices of motions to dismiss, bill of particulars, memorandum of law and supplementary motion for pre-trial disclosure filed- ret. 1/9/76	2	1/2/76E	
1/22/76	Govt's response to deft's motion for discovery filed and memorandum of law in opposition to motion to dismiss. filed			
1/23/76	Memorandum of law in opposition to motion to dismiss			
1/23/76	Before JUDD,J.- Case called- deft not present- counsel present- deft's motion to dismiss argued and denied- (see order on calendar sheet)- deft's motion forbill of particulars and for inspection and discovery argued- motion granted and denied as indicated on record- case adjd to 4/19/76 for trial			
1/23/76	By JUDD,J.- order filed denying motion to dismiss(order			A

DATE	IV. PROCEEDINGS (continued)	V. EXCLUDABLE DELAY (a)	(b)	(c)	(d)
	on copy of calendar sheet				
18-76	Letter filed dated 2-10-76 received from Chambers re deft from Michael Gillen, Esq	A			2
3-76	Before MISHLER, CH J - SUPERSEDING INDICTMENT filed.				
-18-76	Before JUDD, J - case called - deft & counsel Michael Gillen present - deft arraigned and enters a plea of not guilty on superseding indictment - bail conditions contd - case adjd to 4-19-76 for trial				
-76	75 M 2121(CBE) inserted In CR file.				
3-76	By JUDD, J. Order filed that Stuart Friedman give testimony at the trial in this case and shall answer questions which he is asked, etc. Further Ordered that no testimony of the witness in this case or any information directly or indirectly derived from such testimony etc.				
16-76	Govts Proposed Voir Dire Questions filed.				
19-76	Before ~~MX~~ JUDD, J - case called - deft & counsel M.Gillen present - trial ordered and BEGUN - Jurors selected and sworn - trial contd to 4-20-76 at 10:00 am.				
4-20-76	Govts Requests to Charge filed.				
4-20-76	Before JUDD, J - case called - deft & counsel present - Trial contd - Trial contd to 4-21-76 at 10:45 am.				
4-20-76	By JUDD, J - Order filed that Samuel J.Green give testimony at the trial of the cause of USA vs. Marvin Cristenfeld and shall answer questions which he is asked without asserting his privilege against self-incrimination, and if is further Ordered that no testimony of the witness may be used against him in any criminal case except a prosecution for perjury, etc. (see Order)				
21/76	Before JUDD,J- Case called- deft and counsel present trial resumed- trial contd to 4/22/76				
22/76	Before JUDD,J.- Case called- deft and counsel present trial resumed- trial contd to 4/26/76 at 10:00 A.M.				
26/76	Before JUDD,J.- Case called- deft and counsel present trial resumed- govt rests- deft's motion to dismiss argued- motion denied-trial contd to 4/27/76				
27-76	Before JUDD, J - case called - deft & counsel present - trial resumed - deft Rests - Both sides rest - deft renews all previous motions to dismiss - motions denied - Govt sums up - deft sump up -Govt sums up on rebuttal - Order of sustenance signed - Judge charges Jury - marshals sworn - alternates discharged - Jury retires to deliberate at 3:30 PM. Jury returns at 4:15 PM to hear further charges- Jury resumes deliberations at 4:17 PM - Jury returns at 5:30 PM to be excused for the evening - trial contd to 4-28-76.				
-27-76	By Judd, J - 2 orders of sustenance filed.				
-28-76	Three volumes of stenographers transcripts filed (one dated April 19, 1976;one dated 4-26-76 and one dated 4-27-76)				
-28-76	Before JUDD, J - case called - deft & counsel M.Gillen present - trial resumed - Jury resumes deliberations at 9:35 am - Jury returns at 10:30 am for portion of charge - Jury resumes deliberations at 10:40 am Order of sustenance signed - Jury resumes deliberations at 2:40 PM Jury returns at 4:15 PM and renders verdict of guilty as charged in counts 1 to 8 incl., Jury polled - jury discharged - trial concluded.				

(a) Interval (per Section II) | (b) Start Date / End Date | (c) Ltr. Code | (d) Total Days

B

CRIMINAL DOCKET

DATE	PROCEEDINGS
	Defts motion to set aside verdict argued - motion denied - Case adjd without date for sentencing.
4-28-76	By Judd, J - Order of sustenance filed.
4-29-76	3 volumes of stenographers transcripts filed (pgs 155 to 840)
6-18-76	Before JUDD, J. - Case called & adj'd to 6-24-76 at 10 AM.
6-24-76	Before JUDD, J - case called - deft & counsel M.Gillen present - deft sentenced to imprisonment for 1 year to run concurrent on all counts - to serve 6 months and execution of balance of sentence is suspended and deft is placed on probation pursuant to 18:3651 - Deft fined $2,000.Execution of sentence stayed 10 days or if notice of appeal filed execution stayed panding appeal. On motion of AUSA Kaplan the underlying indictment is dismissed.
6-24-76	Judgment & commitment and order of probation filed - certified copies to Marshal and probation
6-28-76	Stenographers transcript dated June 24, 1976 filed.
6-28-76	Notice of appeal filed
6-28-76	Docket entries and duplicate of notice of appeal mailed to the court of appeals
6-30-76	Petition for order granting immunity etc. filed.
6-30-76	By JUDD, J - Order filed that deft give testimony in the Sept. 1975 Grand Jury for the Eastern District of NY and in any further proceedings resulting therefrom or ancillary thereto and shall answer questions which he is asked without asserting his provilege against self - incrimination and it xx is further ordered that no testimony of the witness above may be used against him in any criminal case except a prosecution for perjury etc.
7-8-76	Copy of order received from C of A directing record to be docketed by 7-14-76 filed.

INDICTMENT

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

Judd D A4 - 5

- X

UNITED STATES OF AMERICA

- against -

MARVIN D. CRISTENFELD,

Defendant.

- X

SUPERSEDING INDICTMENT

Cr. No. 75 CR 896(S)
(T. 18, U.S.C., §371,
T. 18, U.S.C., §1951,
T. 18, U.S.C., §1952,
T. 26, U.S.C., §7206(2))

THE GRAND JURY CHARGES:

COUNT ONE

1. At all times relevant herein, Green Engineering Company, a corporation organized under the laws of the Commonwealth of Pennsylvania, was engaged in supplying engineering and consulting services in various states and it maintained branch offices and employees in various states. In 1968 two of the principal officers of Green Engineering Company organized a partnership, under the laws of the State of New York, known as Samuel J. Green Associates, to transact business for Green Engineering Company with Nassau County, as well as other entities in the public and private sector. Samuel J. Green Associates, which maintained offices in Hicksville, New York, functioned as a branch office of Green Engineering Company; its operating expenses were paid by Green Engineering Company; its employees were paid directly by Green Engineering Company; and its profits were absorbed by Green Engineering Company.

2. At all times relevant herein, MARVIN D. CRISTENFELD, the defendant, was a Commissioner of the Nassau County Board of Elections and Chairman of the Nassau Democratic County Committee. In both capacities he was clothed under the laws of the State of New York with various official powers and duties. Moreover, MARVIN D. CRISTENFELD, the defendant, as Chairman of the Nassau Democratic County Committee, held

himself out to, and was perceived by, Green Engineering Company and Samuel J. Green Associates as having the power to influence the award of contracts for consulting engineering services to be performed for the County of Nassau.

3. MARVIN D. CRISTENFELD, the defendant, told Green Engineering Company, and Samuel J. Green Associates, and their officers and agents, that in order to obtain the award of certain consulting engineering contracts of the County of Nassau for the design of sewage treatment facilities they would have to pay approximately $40,000 to MARVIN D. CRISTENFELD, the defendant, and to the Nassau Democratic County Committee.

4. In or about and between September, 1969 and June, 1973, both dates being approximate and inclusive, MARVIN D. CRISTENFELD, the defendant, knowingly, wilfully and unlawfully did attempt to and did obstruct, delay and affect commerce, as that term is defined in Section 1951(b)(3) of Title 18 of the United States Code, and the movement of materials, equipment, supplies and labor in interstate commerce by attempting to obtain and obtaining approximately $40,000 from Green Engineering Company, Samuel J. Green Associates, its officers and its agents, with the consent for such payment having been induced by the wrongful use of fear of economic loss, and under color of official right.

5. At the direction of MARVIN D. CRISTENFELD, the defendant, payment of the aforesaid sum of approximately $40,000 was made in the following manner:

A. Samuel J. Green, President of Green Engineering Company, personally delivered approximately $12,000 in United States currency to MARVIN D. CRISTENFELD, the defendant, in or about and between 1969

and 1971, both dates being approximate and inclusive.

B. Green Engineering Company made payments by check of approximately $17,500 to Harry Peltz, Jr., Esq., law partner of the defendant, MARVIN D. CRISTENFELD, in or about and between March, 1970 and February, 1973, both dates being approximate and inclusive. Harry Peltz, Jr., did not perform any legal work for Green Engineering Company or Samuel J. Green Associates.

C. Green Engineering Company made payments by check of approximately $6,000 to Olga Mrozack, personal secretary of the defendant, MARVIN D. CRISTENFELD, in or about and between July, 1970 and January, 1973, both dates being approximate and inclusive. Olga Mrozack did not perform any work for Green Engineering Company or Samuel J. Green Associates.

D. Green Engineering Company and Samuel J. Green Associates, its officers and agents, made payments to the Nassau Democratic County Committee in the approximate amount of $5,000.

6. The aforesaid conduct of MARVIN D. CRISTENFELD, the defendant, had the potential of affecting commerce and did affect commerce (a) because it depleted the assets of Green Engineering Company and Samuel J. Green Associates which were engaged in, dependent upon, and regularly used the facilties of interstate commerce, and (b) because the performance of the consulting engineering contracts, which were awarded to Green Engineering Company and Samuel J. Green Associates as a consequence of the extortionate payments described in paragraphs four and five, necessitated the use of the facilities of

interstate commerce, by Green Engineering Company and Samuel J. Green Associates, for the movement of materials and personnel between the Commonwealth of Pennsylvania and the State of New York. (Title 18, United States Code, Section 1951).

COUNT TWO

1. Paragraphs 1, 2, 3, and 5 of Count One of this indictment are realleged and incorporated herein.

2. In or about and between September, 1969 and June, 1973, both dates being approximate and inclusive, MARVIN D. CRISTENFELD, the defendant, did knowingly, wilfully and unlawfully cause Samuel J. Green to travel in interstate commerce from the Commonwealth of Pennsylvania to the State of New York, within the Eastern District of New York, and did cause the facilities of interstate commerce, including the mails, to be used, with intent to promote, manage, establish, carry on and facilitate the promotion, management, establishment, and carrying on of an unlawful activity, and to distribute the proceeds of an unlawful activity, said unlawful activity being the crime of extortion in violation of the laws of the State of New York. (Title 18, United States Code, Section 1952).

COUNT THREE

1. The allegations of Count One of this indictment are realleged and incorporated herein.

2. In or about and between March, 1970 and February, 1973, both dates being approximate and inclusive, in the Eastern District of New York and elsewhere, MARVIN D. CRISTENFELD, the defendant, Samuel J. Green, named herein as a co-conspirator but not as a defendant, and others known and unknown to the Grand Jury, wilfully, knowingly, and unlawfully did combine, conspire, confederate and agree together and with each other

to defraud the United States by obstructing and hindering the Internal Revenue Service in the ascertainment and collection of information used in assessing and collecting taxes, and in the collection of taxes, and by making false, fictitious and fraudulent statements in connection with the preparation and filing of documents submitted and filed with the Internal Revenue Service.

3. It was a part of said conspiracy that MARVIN D. CRISTENFELD, the defendant, would cause Samuel J. Green, named herein as co-conspirator but not as a defendant, and others known and unknown to the Grand Jury, to pay the sum of $500 a month to Harry Peltz, Jr., Esq

4. It was further part of said conspiracy that the aforesaid payments, which totaled approximately $17,500, would constitute partial payment of the aforesaid sum of $40,000 which Cristenfeld had unlawfully demanded from Samuel J. Green, named herein as a co-conspirator but not as a defendant. During the course of the aforesaid conspiracy, Harry Peltz, Jr., Esq., performed no legal work for Green Engineering Company or Samuel J. Green Associates.

5. It was further a part of said conspiracy that MARVIN D. CRISTENFELD, the defendant, and Samuel J. Green, named herein as a co-conspirator but not as a defendant, and others known and unknown to the Grand Jury, combined, conspired, confederated and agreed that the aforesaid payments of $500 to Harry Peltz, Jr., Esq., would be falsely, ficititiously and fraudulently claimed as ordinary and necessary business expense deductions on the Federal Income Tax Returns filed by Green Engineering Company, whereas in truth and in fact, as the aforesaid defendant and the co-conspirators well knew, such payments could not be claimed as ordinary or necessary

business expenses of said corporation, thereby obstructing the Internal Revenue Service in the ascertainment, assessment and collection of information used in assessing and collecting taxes, and in the collection of taxes.

6. It was further a part of said conspiracy that MARVIN D. CRISTENFELD, the defendant, and Samuel J. Green, named herein as a co-conspirator but not as a defendant, would conceal the existence of the conspiracy and would take steps to prevent disclosure of their activities.

O V E R T A C T S

In furtherance of, and to effect the objects of said conspiracy, MARVIN D. CRISTENFELD, the defendant, and Samuel J. Green, named herein as a co-conspirator but not as a defendant, committed the following overt acts, among others, in the Eastern District of New York and elsewhere:

1. In or about and between March, 1970 and February, 1973, both dates being approximate and inclusive, Green Engineering Company caused monthly payments of $500 to be made to Harry Peltz, Jr., Esq.

2. Green Engineering Company filed Federal Corporate Income Tax Returns for the fiscal years ending March 31, 1971, March 31, 1972 and March 31, 1973. (Title 18, United States Code, Section 371).

COUNT FOUR

1. The allegations of Count One of this indictment are realleged and incorporated herein.

2. In or about and between July, 1970 and January, 1973, both dates being approximate and inclusive, within the Eastern District of New York and elsewhere, MARVIN D. CRISTENFELD, the defendant, and Samuel J. Green, named herein as a co-conspirator but not as a defendant, wilfully, knowingly and unlawfully did combine, conspire, confederate and agree together and with

each other to defraud the United States by obstructing and hindering the Internal Revenue Service in the ascertainment and collection of information used in the assessing and collecting of taxes, and in the collection of taxes, and by making false, fictitious and fraudulent statements in connection with the preparation and filing of documents submitted and filed with the Internal Revenue Service.

3. It was part of said conspiracy that MARVIN D. CRISTENFELD, the defendant, would cause Samuel J. Green, named herein as a co-conspirator but not as a defendant, and others known and unknown to the Grand Jury to place Olga Mrozack, the personal secretary of MARVIN D. CRISTENFELD, the defendant, on the payroll of Green Engineering Company, and make payments of $50 a week to said Olga Mrozack.

4. It was further a part of said conspiracy that the aforesaid payments, which totaled approximately $6,000, would constitute partial payment of the aforesaid sum of $40,000 which MARVIN D. CRISTENFELD, the defendant, had unlawfully demanded from Samuel J. Green, named herein as a co-conspirator but not as a defendant. During the course of the aforesaid conspiracy, Olga Mrozack performed no work for Green Engineering Company or Samuel J. Green Associates.

5. It was further a part of said conspiracy that MARVIN D. CRISTENFELD, the defendant, and Samuel J. Green, named herein as a co-conspirator but not as a defendant, and others known and unknown to the Grand Jury, combined, conspired, confederated and agreed that the aforesaid payments to Olga Mrozack would falsely, fictitiously, and fraudulently be claimed as ordinary and necessary business expense deductions on the Federal Income Tax Returns filed by Green Engineering Company, whereas in truth and in fact, as the aforesaid defendant and co-conspirators knew, such payments could not be claimed as ordinary or necessary business expenses of said corporation,

thereby depriving and obstructing the Internal Revenue Service in the ascertainment, assessment, and collection of information used in assessing and collecting taxes, and in the collection of taxes.

6. It was further a part of said conspiracy that MARVIN D. CRISTENFELD, the defendant, and Samuel J. Green, named herein as a co-conspirator but not as a defendant, would conceal the existence of such conspiracy and would take steps to prevent disclosure of their activities.

O V E R T A C T S

In furtherance of, and to effect the objects of said conspiracy, MARVIN D. CRISTENFELD, the defendant, and Samuel J. Green, named herein as a co-conspirator but not as a defendant, committed the following overt acts, among others, within the Eastern District of New York and elsewhere:

1. In or about and between July, 1970 and January, 1973, both dates being approximate and inclusive, Green Engineering Company caused bi-weekly payments to be made to Olga Mrozack.

2. Green Engineering Company filed Federal Corporate Income Tax Returns for the fiscal years ending March 31, 1971, March 31, 1972 and March 31, 1973. (Title 18, United States Code, Section 371).

COUNT FIVE

1. The allegations of Counts One, Two, Three and Four of this indictment are realleged and incorporated herein.

2. In or about and between March, 1970 and June, 1970, both dates being approximate and inclusive, within the Eastern District of New York, pursuant to the plan and purpose to commit the crimes set forth in Counts One, Two, Three and Four of this indictment, MARVIN D. CRISTENFELD, the defendant, did wilfully, knowingly and unlawfully aid and assist in, counsel

and advise Green Engineering Company to prepare and present to the Internal Revenue Service a corporate income tax return for the fiscal year ending March 31, 1971, which was false and fraudulent as to material matters in that said return included certain payments to Olga Mrozack as salary and wage expenses, and certain payments to Harry Peltz, Jr. as professional services, whereas, as the defendant MARVIN D. CRISTENFELD well knew, these payments could not be claimed as, and were not, ordinary and necessary business expenses, but were in fact payments to an employee of the Nassau Democratic County Committee in the case of Olga Mrozack, the defendant's personal secretary, and payments to the defendant's law partner in the case of Harry Peltz, Jr., for which said individuals performed no services for Green Engineering Company, or Samuel J. Green Associates. (Title 26, United States Code, Section 7206(2)).

COUNT SIX

1. At all times relevant herein, Herbert Pomerantz, Consulting Engineer, was an engineering firm providing consulting and engineering services to the County of Nassau and elsewhere.

2. At all times relevant herein, MARVIN D. CRISTENFELD, the defendant, was a Commissioner of the Nassau County Board of Elections and Chairman of the Nassau Democratic County Committee.

3. In or about and between December, 1969 and April, 1972, both dates being approximate and inclusive, within the Eastern District of New York and elsewhere, MARVIN D. CRISTENFELD, the defendant, and Herbert Pomerantz, named herein as a co-conspirator but not as a defendant, wilfully, knowingly, and unlawfully did combine, conspire, confederate and agree together and with each other to defraud the United States by obstructing and hindering the Internal Revenue Service in the ascertainment and collection of information used in assessing and collecting

taxes, in the collection of taxes, and by making false, fictitious and fraudulent statements in connection with the preparation and filing of documents submitted and filed with the Internal Revenue Service.

4. It was part of said conspiracy that MARVIN D. CRISTENFELD, the defendant, would cause Herbert Pomerantz, named herein as a co-conspirator but not as a defendant, to place Donald Noonan and Albert Myers, individuals associated with and working on behalf of the Nassau Democratic County Committee, on the payroll of the firm of Herbert Pomerantz, Consulting Engineer.

5. It was further a part of said conspiracy that MARVIN D. CRISTENFELD, the defendant, and Herbert Pomerantz, named herein as a co-conspirator and not as a defendant, combined, conspired, confederated and agreed that the aforesaid payments to Donald Noonan and Albert Myers would be falsely, fictitiously and fraudulently claimed as ordinary and necessary business expense deductions on the Federal Income Tax Returns of the aforesaid Herbert Pomerantz, whereas in truth and in fact, as the aforesaid defendant, and the co-conspirator well knew, such payments could not be claimed as ordinary or necessary business expenses of said business, thereby obstrucing and hindering the Internal Revenue Service in the ascertainment, assessment and collection of information used in assessing and collecting taxes, and in the collection of taxes.

6. It was further a part of said conspiracy that MARVIN D. CRISTENFELD, the defendant, and Herbert Pomerantz, named herein as a co-conspirator but not as a defendant, would conceal the existence of such conspiracy and would take steps to prevent disclosure of their activities.

OVERT ACTS

In furtherance of, and to effect the objects of said conspiracy, MARVIN D. CRISTENFELD, the defendant, and Herbert Pomerantz, named herein as a co-conspirator but not as a defendant, committed the following overt acts, among others, within the Eastern District of New York and elsewhere:

1. In or about and between September, 1969 and December, 1969, both dates being approximate and inclusive, MARVIN D. CRISTENFELD, the defendant, and Herbert Pomerantz, named herein as a co-conspirator but not as a defendant, met at 240 Mineola Boulevard, Mineola, New York.

2. In or about January, 1970, Albert Myers was placed on the payroll of the engineering firm of Herbert Pomerantz, Consulting Engineer.

3. In or about June, 1970, MARVIN D. CRISTENFELD, the defendant, and Herbert Pomerantz, named herein as a co-conspirator but not as a defendant, met at 240 Mineola Boulevard, Mineola, New York.

4. In or about June, 1970, Donald Noonan was placed on the payroll of the engineering firm of Herbert Pomerantz, Consulting Engineer.

5. In or about April, 1971, Herbert Pomerantz, filed a Federal Income Tax Return for the taxable year 1970.

6. In or about April, 1972, Herbert Pomerantz filed a Federal Income Tax Return for the taxable year 1971.

(Title 18, United States Code, Section 371)

COUNT SEVEN

1. The allegations of Count Six of this indictment are realleged and incorporated herein.

2. In or about and between December, 1969 and April, 1971, both dates being approximate and inclusive, pursuant to the plan and purpose to commit the crimes set forth in Count

Six of this indictment, within the Eastern District of New York, MARVIN D. CRISTENFELD, the defendant, did wilfully, knowingly and unlawfully aid and assist in, counsel and advise Herbert Pomerantz, Consulting Engineer to prepare and present to the Internal Revenue Service for the year 1970, a Federal Income Tax Return for the taxable year 1970 which was false and fraudulent as to material matters in that said return included payments of approximately $11,000 to Donald Noonan and Albert Myers as salary and wage expenses, whereas, as the defendant MARVIN D. CRISTENFELD well knew, these deductions could not be claimed as and were not ordinary and necessary business expenses, but were in fact payments to workers of the Nassau Democratic County Committee for which said individuals performed no services for Herbert Pomerantz, Consulting Engineer. (Title 26, United States Code, Section 7206(2)).

COUNT EIGHT

1. At all times relevant herein, Peter Flack, Consulting Engineer, was an engineering firm providing consulting and engineering services to the County of Nassau and elsewhere.

2. At all times relevant herein, MARVIN D. CRISTENFELD, the defendant, was Commissioner of the Board of Elections, and prior to July, 1969 was Vice-Chairman and subsequent thereto was Chairman of the Nassau Democratic County Committee.

3. In or about and between September, 1968 and December, 1968, the defendant MARVIN D. CRISTENFELD did cause Brooklyn Letter Service, Inc. to forward false and fictitious invoices to Peter Flack, Consulting Engineer, 45 West 34th Street, New York City in amounts approximating $8,000.

4. In or about and between September 1968 and April, 1970 both dates being approximate and inclusive, within the Eastern District of New York, MARVIN D. CRISTENFELD, the defendant did willfully, knowingly and unlawfully aid and assist in, counsel and advise Peter Flack to prepare and present to the Internal Revenue Service a Federal Income Tax Return for the taxable year 1969 filed on or about April 15, 1970, which was false and fraudulent as to material matters in that it included payment of approximately $8,400 to Brooklyn Letter Service, Inc., as office and postage expenses, whereas, as the defendant MARVIN D. CRISTENFELD well knew, this deduction could not be claimed as and was not an ordinary and necessary business expense, but was in fact a political contribution to the Nassau Democratic County Committee. (Title 26, United States Code, Section 7206(2)).

A TRUE BILL.

_____

FOREMAN.

_____

DAVID G. TRAGER
UNITED STATES ATTORNEY
EASTERN DISTRICT OF NEW YORK

Form DJ-195
(Ed. 2-7-66)

A 18

No. 75 CR 896 (S)

UNITED STATES DISTRICT COURT

Eastern District of New York

Criminal Division

THE UNITED STATES OF AMERICA

vs.

MARVIN D. CRISTENFELD,

Defendant.

INDICTMENT

(T.18,U.S.C.,§371, §1951, §1952
and T.26, U.S.C.,§7206(2))

A true bill,

Foreman.

Filed in open court this ..... day

of ....., A. D. 19....

Clerk.

Bail, $.....

GPO 902-482

EXTRACTS FROM TRIAL TESTIMONY

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

A 19

----------X

UNITED STATES OF AMERICA, :

-against- :

MARVIN D. CHRISTENFELD, :

Defendant. :

----------X

75-CR-696

United States Courthouse
Brooklyn, New York

April 19, 1976
10:00 o'clock A.M.

B e f o r e :

HONORABLE ORRIN G. JUDD, U.S.D.J.

EMANUEL KARR
OFFICIAL COURT REPORTER

MR. GILLEN: I am sorry. I didn't get the number.

MR. KAPLAN: $44,000.

MR. GILLEN : All right.

MR. KAPLAN: (Addressing jury) Now you are going to find, you are going to hear the term of approximately $40,000 during the course of this trial, and this was after Christenfeld had made his statement with respect to the commitment that was expected by Green in order to get these two contracts, that then Green went through the machinations in his own mind as to what he was going to do, and you are going to find that Mr. Green had been involved in the political process before and had been familiar with what was required by politicians, Government officials, in connection with the award of personal service contracts, and you are going to --

MR. GILLEN: Your Honor, I hesitate to rise again, but again I don't know what Mr. Kaplan is saying. Is he saying that the political system is corrupt --

THE COURT: I thought he said that Green had been in similar situations before, and I thought I heard something about that during the pretrial, so I will make no comment now.

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THE COURT: Mr. Kaplan, you may begin.

MR. KAPLAN: The Government calls Herbert Pomerantz.

H E R B E R T P O M E R A N T Z , called as a witness, having been first duly sworn by the Clerk of the Court, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. KAPLAN:

Q Mr. Pomerantz, where do you presently reside?

A 3648 Libby Lane, Wantaugh, New York.

Q What is your present occupation?

A Consulting engineer.

Q And what is the present name of your business?

A Herbert Pomerantz, P.C..

Q Can you tell the jury -- give us a general idea of the nature of the work that you do as a consulting engineer?

A We do design work and report work for mechanical trades, for buildings.

Q When you say mechanical work, can you expand on that, just to give -- the jury may not have an idea of what that is.

A Design of the heating, air conditioning, plumbing systems, electrical systems.

Q You don't actually construct that with your own

hands?

A No.

Q What do you do?

A We do the drawings, the plans and specifications.

Q How long a period of time have you operated as a consulting engineer?

A I went into practice under the name of Herbert Pomerantz Associates in 1967. Prior to that I was in practice under the name of Brown & Pomerantz.

Q What is your professional training and experience?

A I graduated from CCNY in 1949. I was licensed in New York State in 1954. I have been a practicing engineer ever since that time.

Q Mr. Pomerantz, can you tell us the difference between a private consultant contract and a public works contract?

A A public works contract is a personal service agreement with some governmental agency. A private contract is with a private individual.

Q When you say personal service agreement, please tell the jury what you mean by that term?

A Well, there are no bids taken on these personal service agreements. They are usually given out to people

that qualify.

Q When you say given out, try to explain to the jury the difference between a bid contract and a personal service agreement?

A Well, a personal service agreement is -- as in the case of most professions, they are assigned to people based on their experience, qualifications, their competence, their availability. Whereas a bid contract normally is bid against a set form of documents, plans and specifications. Usually the low man gets it.

Q I direct your attention to the year 1965. Will you tell us how you were employed at that time?

A In 1965 I left my previous business, Brown & Pomerantz, and I was employed by the Department of Public Works of Nassau County as Deputy Commissioner of Public Works.

Q Deputy Commissioner of Public Works?

A Yes.

Q You will have to keep your voice up so that they can hear you in the back.

A Yes. Deputy Commissioner of Public Works for buildings.

Q How did it come about, Mr. Pomerantz, that you obtained that particular position?

A I went to see Mr. Christenfeld at Democratic

Headquarters and we discussed it. And he made a phone call on my behalf to the present commissioner at that time, Eugene Nickerson, for an appointment.

Q Now, at the time that you went to see Mr.Christenfeld, what position did he hold?

A He was vice chairman of the Democratic Party of Nassau County.

Q Who was the chairman?

A Jack English.

Q How did you get to Mr. Christenfeld in order to obtain this position?

A Well, my district leader sent me there. And Mr. Christenfeld handled that sort of patronage for getting jobs.

Q Your district leader sent you there?

A Yes.

Q Tell the jury what a district leader is.

MR. GILLEN: Your Honor, I object.

THE COURT: I think you can get an explanation of a district leader. I am not going to have you go into the conversation.

MR. KAPLAN: I just want to lay the background for this.

THE COURT: What do you mean by district leader?

THE WITNESS: The district leader was in charge of a number of election districts. Politically in charge.

Q And he sent you to Mr. Christenfeld?

A Yes.

Q And as a result of your conversation with Mr. Christenfeld, you say he made a phone call for you; is that correct?

A Yes.

Q How soon after that did you obtain this particular position?

A Probably within a month or two.

Q During the year 1965, when you became a commissioner or deputy commissioner, until 1971, what party was in power at Nassau County?

A Democratic party.

Q Explain that for the jury, if you will.

A Well, the county executive was a democrat.

Q What was his name?

A Eugene Nickerson.

Q Did he have the power to make appointments?

A Yes.

Q In connection with the Department of Public Works, do you know if he made the appointment of the

commissioner for the Department of Public Works?

A Yes.

Q Tell us, if you will, the relationship between the County Executive, Mr. Nickerson, and the democratic party at 240 Mineola Boulevard?

A Well, he was the County Executive. And he was sponsored by the democratic party. They helped him get elected.

Q What was the relationship between Mr. Nickerson and Mr. English and Mr. Christenfeld, as you knew it and observed it?

A As a political relationship.

Q Was it close?

MR. GILLEN: Your Honor, I object.

THE COURT: Yes. Sustained. I don't think there is any --

MR. KAPLAN: I will withdraw the last question, your Honor.

Q In 1965, who was the most important person in the party's mechanism?

MR. GILLEN: I object to that as a class.

THE COURT: No. I think that is one that he can give. It is subject to cross-examination.

THE WITNESS: Will you repeat the --

Q In 1965, when you assumed this position as Deputy Commissioner, who was the most important person in the party hierarchy?

A Jack English.

Q Who was the second most important man?

a Marvin Christenfeld.

Q Tell us, if you can, the functions that Mr. Christenfeld played as vice chairman during the particular period in question?

A He was the administrative head of the democratic party and also in charge of patronage.

Q In charge of patronage?

A Yes.

Q Did he have any position in fund raising?

A Yes.

Q What function was that?

A Part of his administrative duties were to organize dinner dances, cocktail parties, and generally being in charge of that.

Q Now, Mr. Pomerantz, you stated at the time you became a deputy commissioner in the Department of Public Works, that that was around 1965; is that correct?

A Yes.

(Continued next page.)

BY MR. KAPLAN:

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Q Did you hold any particular position?

A I was Committeeman.

Q Committeeman in the party?

A Yes.

Q Tell the jury what a committeeman is.

A Committeeman is in charge of, political charge of a number of block captains. Each election district was split up, handled by two Committeemen an Committeemen had a number of block captains. The pri purpose was to disseminate political literature, coll funds.

Q During the period of time that you were Department of Public Works, you said Mr. Gibbons init was the commissioner; is that correct?

A Yes.

Q Subsequently was there another commissi

A Yes.

Q Who was that?

A Herbert Simmons.

Q Do you know Mr. Simmons' background?

A Yes.

Q What was he?

A He was an engineer and an attorney.

Q What else?

A (No response.)

Q In terms of his background?

A He ran for office one time on the Highway -- which later on became an appointment.

Q Was he a Committeeman as well?

A Yes.

Q WAs he active in politics as well?

A Yes.

Q In connection with Mr. Simmons, what was his relationship with Mr. Marvin Christenfeld?

A They were friends.

Q Personal friends?

A Yes.

Q During the period of time that you were Deputy Commissioner in the Department of Public Works, what duty did you perform?

A Administrator in charge of all public buildings going up in Nassau County. I was responsible for their review, adequacy of the plans.

Q Did you have occasion to award any contracts?

A Personally, no.

Q During the period of time that you were Deputy Commissioner in the Department of Public Works, did

you have occasion to attend any political functions?

A Yes.

Q What type of political functions did you attend?

A Dinner, dances, cocktail parties.

Q In connection with the cocktail parties, are you familiar with a certain type of cocktail party that was had while you were a public official?

A Yes.

Q What type of cocktail party was that?

A Usually fund raising cocktail parties.

Q For the most part did you attend parties which certain types of people were present?

A Generally people in my own field.

Q Architects, engineers?

A Yes.

Q Do you know if some of these people had business with the county?

A Yes.

Q In connection with those -- those were the guests, in other words, at those parties; is that correct?

A Yes.

Q Were there other people from another area of the community, so to speak, other than architects, engineers?

A There may have been some, yes.

Q But for the most part architects and engineers; is that correct?

MR. GILLEN: I would object to the continual repetition of Mr. Kaplan of the witness' statements, leading.

THE COURT: It hasn't gone that far. Go on, Mr. Kaplan.

Q These were fund raising affairs, Mr. Pomerantz?

A Essentially.

Q Other than architects and engineers who sponsored these affairs -- withdrawn.

Who sponsored these affairs?

A They were sponsored by the Nassau County Democratic Party.

Q Who was present in the party that you can recall?

A I think, though I'm not quite sure, some public officials.

Q From what department?

A Department of Public Works.

Q Did you yourself attend?

A I think. I went to some prior and after. I'm not sure.

Q How about Mr. Simmons?

A Again, I think, but I'm not sure.

MR. GILLEN: I move to strike all what the witness says. We have pure speculation.

THE COURT: When you say "think," do you have any recollection?

THE WITNESS: I have a recollection, but I went to some before I was appointed and some after.

Q In any --

THE COURT: I'll let the answer stand.

Q What party functionaries were present, if any?

A I went to a cocktail party where Mr. Christenfeld was present.

Q Mr. English present at any of these parties?

A I think so.

Q There came a time when you left the Department of Public Works; is that correct?

A Yes.

Q Approximately when was that?

A '67, 1967, middle of 1967.

Q Were you aware of any rule in effect at the time you left the Department of Public Works?

A Yes.

Q What rule was that?

A Mr. Nickerson indicated he did not want any of

his people in a relatively high position to get any jobs of a like nature from Nassau County.

Q Is that known as the 2-year rule?

A Yes.

Q So, after you left the Department of Public Works, what type of work were you doing?

A I became a consulting engineer again.

Q Where were your offices located?

A Manhattan.

Q In connection with your position as a consulting engineer, did you seek jobs from Nassau County?

A Yes.

Q What type of contracts, particularly were you seeking?

A Design engineering contracts.

Q When you left in 1967, did there come a time when you sought work, specifically, saw people in connection with seeking work in Nassau County?

A Yes.

Q Could you tell us who, if anyone, you saw?

A I saw Commissioner Simmons and Mr. Christenfeld.

Q Can you tell us in connection with the award of personal service contracts, on what criteria are such contracts awarded?

A Certainly you have to be licensed, competent. You have to be available to do it and generally have to make a contribution.

Q In connection with your visits to Mr. Simmons, did you have any success in obtaining a job?

A Not for the first two years, no.

Q Did you see Mr. Christenfeld?

A Yes.

Q During what period of time?

A I saw Mr. Christenfeld probably between '67 and '71, '72.

Q By the way, how are these contracts awarded; what was the technical procedure whereby these contracts would be actually awarded?

A Usually the contract was awarded to an architect. The architects were reviewed. The Deputy Commissioner would very often make a recommendation to the Commissioner or the Commissioner on his own would select the architect we felt was qualified. The architect in turn would then select various consultants.

Q This is in connection with building contracts, the type of work you do, mechanical engineering?

A Yes.

Q Mr. Pomerantz, after the architect or engineer

is selected by the Commissioner of the Department of Public Works, what then happens? How is the contract prepared?

A Usually before the contract is prepared, he requests in writing approval of his engineers.

Q Does there come a time when a contract is prepared and signed?

A Yes.

Q Who signs the contract if you can recall?

A The Commissioner and I think the County Executive.

Q There are also some other signatures on the contracts; is that correct?

A I'm not sure -- yes.

Q Who is the one as far as you know when you were a Deputy Commissioner, the one who actually gives out the contracts?

A The Commissioner.

Q And then the County Executive would ratify it, would you say?

A Yes.

MR. GILLEN: I object.

THE COURT: That's really a leading --

MR. KAPLAN: I'll withdraw it.

THE COURT: I recommend a new question. Go ahead.

The jury, please, disregard that question and answer.

Q You say that you would be awarded a contract by the Department of Public Works. What functions would the County Executive, Mr. Nickerson, play once he got the recommendation or the documents?

MR. GILLEN: If he knows.

Q (Continuing.) As far as you know.

THE COURT: If you know.

A As far as I know, he would sign it.

Q Was he involved, personally, in the negotiations with these engineers?

A I don't think so.

MR. GILLEN: Would you strike the answer, again "I don't think so."

THE COURT: Do you --

A (Continuing.) I don't know.

THE COURT: Strike it out.

Q With respect to any of the contracts you performed with any contract that you were involved in as a public official, was he involved in the negotiations?

A No.

part of that, not what you had in mind; what was indicated.

THE WITNESS: There was no specific amount indicated.

Q Was there substantially more than $2,500?

MR. GILLEN: Your Honor --

THE COURT: He said that.

Q You said a less onerous way?

A Yes.

Q Would you explain that to the Jury?

MR. GILLEN: I object. The question is: What was said?

THE COURT: Overruled.

A Repeat it, please.

Q You said you were looking for a less onerous way to make contributions. Explain.

A I could not make a large sum, lump sum payment.

Q What else was said?

A He suggested that I could carry a man on my payroll, party worker.

Q And?

A And we discussed it and salary.

Q Prior to that, what was said about the

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benefit of anything that you would receive from this?

MR. GILLEN: Objection, leading. This is a crucial issue here, your Honor.

THE COURT: No; what else was said?

THE WITNESS: Well, he said if I carried this party worker on my payroll and, of course, he wouldn't be as -- it wouldn't be as substnatial to me because I could get a tax deduction on it.

BY MR. KAPLAN:

Q Who suggested for you to carry a party worker on the payroll, was that you or Mr. Christenfeld?

A Mr. Christenfeld.

Q Was there any other discussion of the consequence of doing it this way?

A Well, this would be -- then I would get a tax deduction.

Q Explain to the Jury how you would get a tax deduction of doing it their way.

A If I carried this man on the payroll, I can claim him for tax purposes as an employee and this would decrease my gross income and subsequently my net income.

Q We don't have tax experts on the Jury, Mr. Pomerantz.

THE COURT: Please.

A Yes.

Q Explain that to the jury.

A Well, mine is an engineering firm. I wanted to know if he had an engineering background. He did not. Mr. Christenfeld told me he had some accounting background.

Q What was the purpose of your having this conversation?

A Primarily so I could make it look good on the internal revenue form.

Q Make it look good? What do you mean by making it look good.

MR. GILLEN: I object to continual questions, conclusions that are asked for. It's what was said. That's the evidence.

THE COURT: Oh, goodness. The witness said he wanted to make it look good on his income tax return. He's entitled to explain.

Go ahead and explain it.

A I wanted to carry him as a necessary business expense.

Q Was he a necessary business expense?

A No.

Q Was he going to perform any services for

Pomerantz Consulting Engineers?

A No.

Q Was he supposed to?

A No.

Q Did he ever?

A No.

Q Did Mr. Christenfeld know this?

A Yes.

Q Did you know this?

A Yes.

Q By the way, there came a time, did there not, when there was another person placed upon the payroll?

A Yes.

Q What was his name?

A Don Noonan.

Q Do you know his position in the party?

A Just that he worked there.

Q Did he ever perform any services?

A (No response)

Q For the consulting firm, not the party?

A No.

Q In connection with putting these people on the payroll, did you have certain payroll records?

A Yes.

I was assured I would get the job and I put him back on the payroll waiting for that job to go.

Q Did Mr. Chirstenfeld know that Mr. Myers was not performing any services for you?

A Yes.

Q How do you know?

A We had discussions, the whole premise of Mr. Myers' working for me was that he was not working for me as an engineer, his function was to work for the party.

Q And you were paying him?

A And I waspaying him.

Q So now there comes another change in Mr. Myers' status; is that correct?

A That is correct.

Q Approximately when does that take place?

A That takes place in June, the end of May.

Q Well, on May 30 there is a payment of another check; is that correct?

A Yes.

Q And do you recall when he was placed on the payroll again after he was taken off?

A After I had that conversation with Mr. Christenfeld when he assured me that the job was forthcoming, I put him back on that, and that was the May 30 check.

Q So it would have been some time --

THE COURT: Why don't you go to another subject, you have covered that?

Q Did there come a time when there was another change in Mr. Myers' status in connection with these payments?

A The job still didn't come through. I had another conversation with him again, I was assured that the contract would come through, but at this point it was a matter of wherewithal, too, and I put him on $80 every two weeks.

Q Approximately how many weeks was that?

A I can't see the chart.

MR. GILLEN: Eight.

A Eight weeks, four pay periods.

Q Do you recall anything further happening after you put him on the $80 a week?

A Sometime around June, I guess, the contract for the shelter did come through, I had another conversation with Mr. Christenfeld and he suggested that I put Mr. Noonan on, carry Mr. Noonan on my payroll.

Q When you found out that the children's shelter contract was coming through, did you have a conversation with Mr. Christenfeld?

A Yes.

Q What did you say to him and what did he say to

you, if you can recall?

A Well, to the best of my recollection he now showed me that I did have the contract and I would again have to increase my contributions, so he suggested that Mr. Noonan come down to see me.

Q And in connection with putting Mr. Noonan on the payroll, were there any conversations in that regard?

A Well, it was the same, the same operation as Mr. Myers, Mr. Noonan would show up, fill out the W2, the necessary forms, and again I asked him what his background was so I have some logical way to tell the Internal Revenue and to carry it, and his background, what it was, and I think he had some legal training, he was going to law school, so we mentioned something about, well we can carry this as a spec writer or something like that.

Q A spec writer?

A Yes.

Q Did Mr. Christenfeld know that Mr. Noonan was performing or not performing any services?

A He knew that Mr. Noonan wasn't performing any engineering services.

Q Or any services?

A Not for my company.

Q And Mr. Noonan went on on a certain date?

A YEs.

Q Approximately when was that?

A July.

Q And as you indicated, there came a time when you received the award of the children's shelter contract; is that correct?

A that is correct.

MR. KAPLAN: I ask that this document be marked for identification.

MR. GILLEN: May we see it, perhaps we can agree on it?

THE CLERK: Document marked 6 for identification.

THE COURT: Take it to Mr. Gillen.

MR. KAPLAN: I will take it.

(Mr. Kaplan handed the document to Mr. Gillen.)

MR. GILLEN: No objection.

Q I show you what has been marked as Government's Exhibit 6 in evidence.

THE CLERK: Yes, document received in evidence as Government's 6.

Q Now, I ask you what this particular document reflects?

A This is the contract for the children's shelter.

Q When did this come through?

A It is dated July 10th.

I don't seem to have a receipt date on it.

Q Do you recall if you received an informal notice prior to that time?

A Yes, in fact I actually did a little bit of work on it prior to that.

Q This was one of those sub-consulting contracts for the job; is that correct?

A Yes.

Q Now, you stated that there was a change of payments around that time; is that correct?

A That is correct.

Q June, July?

A Yes.

Q Can you explain that again?

A The July change of payment?

Q That is correct.

A Well, the July change in payment took place because I now in fact did get the children's shelter.

Q What did you do with respect to Myers, if anything?

A Well, I think around that time we had a conversation about the Nassau County Community College and we --

Q Well, what was the Nassau County Community Col-

lege, what was that?

A Well, the Nassau County Community College, that was another job out there which I wanted to be the mechanical engineer.

Q What did Mr. Christenfeld say to you concerning that job?

A It was essentially the same type of conversation, but --

MR. GILLEN: Your Honor, I will object, he was asked what the conversation was, and now he is telling us that it was essentially the same type, whatever that means.

THE COURT: Well, I think the jury and I can figure that out.

MR. GILLEN: That is the point, your Honor, can Mr. Pomerantz figure it out?

MR. KAPLAN: I'm going to object to the use of comments and summations at this point.

THE COURT: Yes, all right.

Q Mr. Pomerantz, just give us a general idea of the conversation you had with Mr. Christenfeld about the Nassau Community College job?

A I wanted the Nassau Community College job and Mr. Christenfeld again was amenable to my getting it,but I

would have to pick up my contributions again, and one of the ways in which I would pick it up was that I would raise Mr. Myers' salary.

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Q In connection with the Noonan payments that are reflected as $200 all the way across the board --

A That is correct.

Q How is it that it was at that particular $200 figure?

A Well, it was going to be a long-standing figure to pay for the job, we didn't really talk about a termination date.

Q IN connection with the payments to Mr. Noonan, certain checks were issued on behalf of your firm; is that correct?

A Yes.

Q And the W-2 form was executed as well; is that correct?

A Yes.

MR. KAPLAN: Will you mark that?

I offer those documents in evidence.

MR. GILLEN: May I just see them?

MR. KAPLAN: Yes.

THE CLERK: Set of checks marked as Government's Exhibit 7 for identification.

MR. GILLEN: I have no objection.

THE COURT: Mark them in evidence.

THE CLERK: Government's Exhibit 7 received in

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evidence.

BY MR. KAPLAN:

Q I show you what has been marked as Government's Exhibit 7 in evidence and ask you if these documents, the checks and the W-2 form, reflect the W-2 form of Mr. Noonan and the checks issued to him?

A Yes.

Q Did Mr. Noonan ever perform any services on behalf of Herbert Pomerantz consulting engineers or yourself?

A No.

Q Was it ever intended that he perform any such services by yourself or Mr. Christenfeld?

A No.

Q Again, what was the purpose of placing him on the payroll?

A The purpose of placing him on the payroll is to carry him on the payroll as a contribution to the Democratic Party, for me to underwrite these contributions, and also as a tax deduction.

Q Whose suggestion was it to put Mr. Noonan on the payroll?

A Mr. Christenfeld.

Q Did there come a time when Mr. Albert Myers was terminated from the payroll?

A Yes.

Q Approximately when was that?

A At the end of November.

Q In connection with that termination, did you have a conversation with Mr. Christenfeld?

A Yes.

Q And can you tell us what you said to him and what he said to you?

A Well, Election Day was over, Mr. Myers was no longer working for the party, there was no longer a reason for me to carry him.

Q Do you know if Mr. Myers terminated his association with the party at that point?

A I didn't know. I assumed so.

Q Did there come a time when Mr. Noonan was terminated as reflected by the payroll books of your company?

A Yes.

Q Approximately when was that?

A April, the next year.

Q Please explain that to the jury.

A Again, the Nassau County Democratic Party was out of power and there was no reason for me to carry Mr. Noonan on the payroll.

Q Did you have a conversation with Mr. Christenfeld

concerning Mr. Noonan?

A Yes.

Q Can you give us the general substance of that conversation?

A Well, I indicated to him that we had no need, we had no need to carry him on the payroll for the party and I was going to terminate him.

Q By the way, when you terminated Myers and Noonan, did you ever speak to Mr. Myers and NOonan about it?

A Not that I can recollect.

Q When you were jumping around with payments, taking Myers up and down the payroll, was Mr. Myers complaining about this?

A I don't think I saw him.

Q Did there come a time when you received a contract in the year 1970, subsequent to the contract for the child's shelter job?

A Pardon me?

Q Did there come a time when you received a subsequent contract from the County of Nassau?

A Yes.

MR. KAPLAN: I ask that this be marked in evidence, if there is no objection.

MR. GILLEN: May I see it?

MR. KAPLAN: Sure.

MR. GILLEN: I have no objection.

THE COURT: All right, mark it.

THE CLERK: Document marked as Government's Exhibit 8 in evidence.

(So marked.)

BY MR. KAPLAN:

Q I show you what has been marked as Government's Exhibit 8 in evidence and ask you what that document represents.

A This is my copy of the contract with the architect that is doing the Community College of Nassau County, the Nassau County Community College.

Q Is the date indicated on that document?

A September 4, 1970.

Q Do you happen to recall if you got notification on that contract some time before September 4th?

A Well, this was the whole basis -- the basis of the discussion about raising Mr. Myers' salary was to know if I got the contract, whether I got the notification I don't recall.

Q In any event, in the normal course of events did you get prior notification before you got the actual documents?

A Yes.

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BY MR. KAPLAN:

Q Did there come a time, Mr. Pomerantz, when you prepared and filed your federal income tax return for the year 1970?

A Yes.

Q Was that filed on or about April 15th, 1971, the next following year?

A Yes.

MR. KAPLAN: Again, I would offer this in evidence, if there is no objection.

MR. GILLEN: No objection.

THE CLERK: Document marked Government Exhibit 10 in evidence.

(So marked.)

Q I show you what has been marked as Government Exhibit 10 in evidence, which is your tax return, and I ask you to tell us if the payments to Meyers and Noonan are taken as a business deduction in your tax return?

A They were.

Q How so?

A They are listed under Schedule C. Schedule C. Lists all the deductions. Yes. Lumps all of the deductions. Yes. Cost of labor.

THE COURT: Not listed by name, are they?

THE WITNESS: No.

Q You have had an occasion to review your payroll records? You know they are reflected in the tax return as cost of labor; is that correct?

A Yes.

Q And they were taken as a tax deduction?

A Yes.

Q Were these two individuals, Meyers and Noonan, ever performing any services on behalf of Herbert Pomerantz Consulting Engineers?

A No.

Q Were they ordinary or necessary business expenses incurred by you in the year in question?

A No.

Q By the way, how much did your tax return reflect as the adjusted gross income?

A I think it grossed $28,000. $25,152.49.

Q Did you realize when you were involved in taking these deductions as business deductions or expenses, that they were not in fact so? That these were fraudulent and illegal deductions?

A Yes.

Q Tell us again who devised this method whereby --

MR. GILLEN: I object.

THE COURT: Sustained.

Q Have you received any promise from the Government, Mr. Pomerantz? A promise or assurance in any way?

A Well, I have immunity from my grand jury against criminal liability on income taxes.

Q Are you aware of a letter that was written by the U. S. Attorney's office to your attorney?

A Yes.

Q In connection with the fact that you wouldn't be prosecuted for this crime?

A Yes.

Q Do you realize that you have no immunity from civil tax liabilities?

A Yes. I understand.

Q And there's no immunity for any perjury?

A Yes.

MR. KAPLAN: I have no further questions.

At this time I would offer the chart in evidence, your Honor.

MR. GILLEN: I object to the chart in evidence, your Honor. He's got the checks. It's a graphic -- or a -- may I have a voir dire on the offer, your Honor.

THE COURT: Let's wait until the cross-examination is over. I will keep it for identification

done 5/17

Pomerantz trans rec'd

A 56

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

----------x

UNITED STATES OF AMERICA, :

-against- : 75-CR-696

MARVIN D. CHRISTENFELD, :

Defendant. :

----------x

United States Courthouse
Brooklyn, New York

April 20, 1976
10:00 o'clock A.M.

B e f o r e :

HONORABLE ORRIN G. JUDD, U.S.D.J.

and a jury

EMANUEL KARR
OFFICIAL COURT REPORTER

Q For what?

A I was also looking for a favor.

Q For what?

A For better Government.

Q What were you looking for better Government for, these were contributions to your friends.

A Not these friends, they were two, they were both my attorneys who I felt helping and I contributed on their behalf.

Q Isn't that the exact same reason why you contributed between one and two per cent of over a million dollars to the Democratic Party?

A At the time I didn't contribute one or two per cent, the one or two per cent is the figure we arrived at on the ultimate fee. It was far more on the fee received to date.

Q Did anybody ever tell you not to talk to the defense in this case, Mr. Pomerantz?

A My attorney advised me not to.

Q Did anybody in the Government tell you in the presence of your attorney?

A I think they advised that it would be better if I didn't, but they didn't tell me --

Q Who told you that it would be better not to talk

to the defense?

A I think the United States Attorney.

Q Mr. Kaplan?

A I don't recall which of the two.

Q When did that happen?

A During the questioning by the United States Attorney.

Q You told us yesterday that you were interviewed nine times by the United States Attorney's offices. Is that correct?

A That is correct.

Q And --

A I don't know if it is nine, but I can give you the date.

Q You gave me on nine days.

Now on July 15, 1975, where did this interview take place, and you can refer to that, if you want to.

A In this building.

Q Who interviewed you?

A Mr. Kaplan and I think Mr. Marcus.

Q Did they take notes?

A Yes.

MR. GILLEN: May I have those notes, please.

MR. KAPLAN: I'm going to object to that,

your Honor, he is not entitled to the Government's notes.

THE COURT: You are not and you should know better.

MR. GILLEN: Then I want the report of interview, may I have the report of interview?

MR. KAPLAN: You know that every report of interview has been turned over.

THE COURT: The jury is excused. Please go back to the jury room.

Don't talk about the case.

(At 10:45 a.m. the jury left the courtroom.)

MR. GILLEN: I ask that the witness be excused, too, your Honor.

THE COURT: Why?

Why:

MR. GILLEN: Well, he can stay here then because I want to make more inquiry on these.

There are nine conversations we are talking about.

THE COURT: These are the conversations with an attorney, and was there any agent present at the time?

MR. KAPLAN: No, there was never any agent, your Honor, only Assistant United States Attorneys

were present.

MR. GILLEN: I find that incredible, your Honor, where I don't have one single statement of Mr. Pomerantz, which is a basis of this indictment, other than the Grand Jury testimony where Mr. Kaplan does most of the testifying and Mr. Pomerantz adopts his statements with yes or no.

Now here is what I am faced with:

Nine separate occasions there are interviews, and I haven't the slightest idea what went on in those interviews.

I don't know why there aren't --

THE COURT: You were a United States Attorney, and Assistant United States Attorney once, you should have some idea of what goes on in an interview with a witness.

MR. GILLEN: Usually and almost invariably, your Honor, I would question people based upon investigative reports. I wasn't a cop when I was an assistant United States Attorney. they would be based upon investigative reports of agents which I turned over when it came to trial.

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Pomerantz-cross

THE COURT: Apparently, there aren't any agent reports here.

MR. GILLEN: Well then, I am entitled to the notes as to what went on in these meetings, or if there is any tape recording or anything like that. Why should the Government be able by this device to bar inquiry into what conversations were had with Mr. Pomerantz during these nine interviews? And the proof of the pudding is on October 8, 1975 -- that is the grand jury minutes. And the grand jury minutes for the most part are adoptive yes or no's by Mr. Pomerantz to Mr. Kaplan's statements. After that there is 11/21/75, 3/30/76, 4/14/76, and 4/19/76. Four meetings after the grand jury. I don't even have a clue as to what went on in these meetings.

THE COURT: Don't pretend to be so unsophisticated.

MR. GILLEN: Well, I don't understand your Honor's statement on unsophistication. I am unsophisticated when it comes to this.

THE COURT: Any lawyer talks with a witness to review his testimony. And you know it perfectly well.

MR. GILLEN: On four occasions?

THE COURT: Don't let your emotions --

MR. GILLEN: Your Honor, let's keep in mind this

case was set down at pleading for a date certain. Yesterday is the date that we went on.

THE COURT: Yes.

MR. GILLEN: We have four separate interviews after the grand jury and four interviews before the grand jury.

THE COURT: Are there any written notes of those interviews, Mr. --

MR. KAPLAN: Other than my own personal notes and perhaps Mr. Marcus' personal notes, there are no reports. I have made a search of our files to turn over every document that is a prior statement that is in any way relevant to this case. And I have even turned over a personal memorandum of Mr. Pomerantz prior to the grand jury in Nassau County, a Newsday memorandum of him, and also the grand jury testimony in Nassau County. And as far as notes, they are scratch notes that we made in preparation for trial.

MR. GILLEN: The only place where it appears in any document that I have been given that Mr. Christenfeld allegedly had conversations with Mr. Pomerantz about putting people on the payroll or some type of tax scheme is in those grand jury minutes.

THE COURT: They have been provided to you. You

don't get attorney's work products.

MR. GILLEN: Your Honor, I believe that Mr. Kaplan was working as an agent of the Government at that time. No different than any IRS agent or an FBI agent. He was not working as an attorney.

THE COURT: Of course, the --

MR. GILLEN: No, sir. With all these interviews -- all these interviews, that's not an attorney's work product. Nine separate conversations with a witness before and after a grand jury.

THE COURT: What is the limit on the number of conversations that an attorney is entitled to have with a witness?

MR. GILLEN: If he acts as an attorney. I respectfully submit here from the very documents that have been produced that Mr. Kaplan, and perhaps Mr. Marcus, too, were working as investigatory agents of the United States Government and not --

THE COURT: I hear you, but it does not appeal to my sense of reason. I am not here to give you attorney's work products.

MR. GILLEN: I respectfully except and I respectfully object to your Honor's ruling on the grounds that the only place in existence apparently by

a contrived or uncontrived scheme of the Government now rests in some purported protected niche. And I most respectfully submit that these reports or notes, or whatever they are, are tantamount to an agent's report no matter what agency he works for and should be made available to the defense to test this witness.

THE COURT: All right. We will keep the witness available after your cross-examination is completed. You can submit memoranda to me.

MR. MARCUS: Your Honor, there is one point I would like to raise with the Court, and that is United States v. Goldberg decided by the United States Supreme Court within the last month. And the United States Supreme Court ruled that under 3500 the only statement that had to be turned over were those adopted, ratified and signed in connection with interviews or discussions with the Assistant U.S. Attorney's Office. I will have the citation for the Court -- a copy for the Court this afternoon.

THE COURT: Were any of these notes of yours shown to Mr. --

MR. KAPLAN: Absolutely not.

THE COURT: (Continuing) -- to Mr. Pomerantz?

MR. KAPLAN: They were never shown to

Mr. Pomerantz. He never signed them, never ratified them, never confirmed them in any way.

MR. GILLEN: May I inquire?

MR. KAPLAN: They were kept --

MR. GILLEN: I am sorry. Are you finished?

May I inquire of Mr. Pomerantz for just a few short questions?

THE COURT: Yes, sir.

MR. GILLEN: Mr. Pomerantz, during these conversations prior to your testimony, did you discuss with Mr. Kaplan those aspects of what you testified to on the stand that he had taken notes on during your interviews with him?

THE WITNESS: Yes.

MR. GILLEN: Do you accept what he said as a result of his notes?

THE WITNESS: I'm not sure what he said. What do you mean by what he said?

MR. GILLEN: Was he referring to his notes when he was questioning you? As to each successive interview, did Mr. Kaplan have notes of the last interview?

THE WITNESS: I don't know. He had notes.

MR. GILLEN: He had notes. And you made certain agreements, did you not, with Mr. Kaplan concerning

whatever notes he referred to?

THE WITNESS: Did I agree to some of the statements that came out of the notes?

MR. GILLEN: Yes.

THE WITNESS: Yes.

MR. GILLEN: And these are his notes you are talking about; isn't that right?

THE WITNESS: Yes.

MR. GILLEN: Did you keep any notes of those yourself? Did you make any contemporaneous memoranda?

THE WITNESS: I made some notes on dates.

MR. GILLEN: Can I see that, please?

THE WITNESS: I don't have it.

MR. GILLEN: What did you do with it?

THE WITNESS: It was just on foolscap.

MR. GILLEN: What was that that you took out of your pocket yesterday?

THE WITNESS: This?

MR. GILLEN: Yes.

THE WITNESS: This is a little diary. Just when I came down yesterday, my attorney -- I'm supposed to file a witness voucher. And my attorney told me -- he sent me a letter to indicate the dates that I was here to appear. So I wrote them down.

MR. GILLEN: Is there anything in that book other than those dates?

THE WITNESS: No.

MR. GILLEN: Based upon the witness' testimony as to what happened in the interviews, I would again ask for Mr. Kaplan's notes.

THE COURT: Motion denied.

MR. GILLEN: I respectfully except.

THE COURT: Yes.

MR. GILLEN: I would ask -- let me ask you this, Mr. Pomerantz. Did you ever give any -- did you ever give any statements to the people in Nassau before you went into that grand jury?

THE WITNESS: I don't recall. I don't remember.

MR. GILLEN: I ask if the Government has any such statements.

MR. KAPLAN: No. Let me say it was the practice of the Assistant District Attorneys in Nassau, as I knew it, not to interview their witnesses before they put them in the grand jury. So I don't think you are going to find anything there, Mr. Gillen.

MR. GILLEN: Well -- well, your Honor, I made all of the arguments I possibly can.

THE COURT: Yes.

MR. GILLEN: I would ask your Honor to change your mind on this score because it effectively forestalls me from inquiry.

THE COURT: No. You have plenty of inquiry.

MR. GILLEN: All right. I respectfully except.

THE COURT: All right. Bring in the jury.

(Whereupon, the jury entered the courtroom.)

Q Mr. Pomerantz, the first interview you told us of was July 15, 1975; is that correct?

A Yes.

Q Were you subpoenaed on that or what? Do you recall?

A No. I think my attorney -- I am not sure if my attorney was called or I was called.

Q And -- well, how would the Government know who your attorney was prior to that?

A Probably called me and I called my attorney.

Q And you physically appeared on July 15th; is that correct?

A That's correct.

Q Did you tell Mr. -- the story that you told on your direct testimony to Mr. Kaplan on that day, did you?

A No.

Q And on that date, was it suggested to you that

you not talk to the defense?

A No.

Q What about on July 18th, three days later, 1975? Did you again appear in the U.S. Attorney's Office?

A Yes.

Q Did you tell on July 18th the stuff that you said on your direct testimony here to the Government?

A I don't think so.

Q But you did have conversations on that day; isn't that right?

A Yes.

Q Were you on that date -- were you working out -- or were you through your attorney and yourself working out a deal with the Government as to what would happen with you?

A No.

Q Were there heated words during these meetings on the 15th and the 18th?

A I don't recall.

Q On the 28th, were you told not to speak to the defense in this case?

A I don't think so.

MR. KAPLAN: I am going to object to this point. Was this before the indictment or after the indictment? I don't understand.

THE COURT: I didn't think he was ever told not to talk to them. I thought his testimony was that the Government could not forbid his talking to the defense, but it would be best if he not do so.

Q Was it best that they suggested that you not do so?

A I think they suggested that it was better if I do not do so.

Q When did that happen, Mr. Pomerantz?

A Later on. The September date.

Q September 16, 1975, did you again appear in the U.S. Attorney's Office?

A Yes.

Q How long were these meetings, incidentally?

A I think the ones in July were very brief.

Q How long?

A I don't know. An hour or two.

Q An hour or two?

A Yes.

Q And in that hour or two, were you closeted with Mr. Kaplan and Mr. Marcus and your attorney?

A And my attorney, yes.

Q And your attorney?

A Yes. I'm not sure if Mr. Marcus was there all

the time, though.

Q All right. On SEptember 16th, how long did that meeting take?

A That, if I remember correctly, was a long meeting.

Q How long?

A I'm not sure, but it was a long meeting.

Q Well, you told us an hour or two is a short meeting.

A I would say three or four hours.

Q Three or four hours?

A Maybe more.

Q Were there heated words during that meeting?

A I think there were some.

Q Were you ever told by the Government or anyone in the Government, if you don't tell us this or that, we are going to indict you?

A I don't recall that language.

Q Excuse me?

A I don't recall in that language.

Q Well, what language was it in?

A I think I was warned if I lied that I could be indicted.

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Q Did anybody show you the same Grand Jury testimony in 1971 that I showed you during any of these meetings?

A I think so. Yes. I think the last meeting.

Q Did you explain to them at that time the difference between donations and contributions as you did to this jury?

A We didn't dwell on it. I don't think so.

Q Did they tell you at that time that anyone -- did anyone say, "Mr. Ponerantz, you lied before that Grand Jury."

A They never emphasized that point. I don't think they thought that the Grand Jury was very -- the District Attorney was very good. That was the impression I got.

Q Well, whether the District Attorney was good or not, did they say to you, "You lied before that Grand Jury"?

A I don't recall them using those terms. No.

Q Did they tell you that you wouldn't be prosecuted for perjury in Nassau County if you told them what they believed to be true?

A No.

Q Now, on October 7, 1975, there was another meeting; correct?

A Pardon?

Q On October 7, 1975.

A Yes.

Q How long did that meeting take?

A One of them, we had lunch in the office. So it was quite a long meeting. I don't recall which one it was.

Q Four or five hours?

A Yes.

Q October 8, 1975, the next day?

A Mm-hum.

Q Another meeting. How long did that last?

A Probably just as long.

Q Another four or five hours?

A Yes.

Q November 21, 1975, how long did that meeting take?

A One of them was the Grand Jury meeting, wasn't it?

Q The Grand Jury was October 8. I am sorry. That is the date.

A Well then, that one didn't take too long. That was just the Grand Jury meeting.

Q November 21, 1975, how long did that meeting take?

A I think it was a long meeting.

Q

Q Four or five hours again?

A I would guess so. I'm not sure.

Q Was this going over your Grand Jury testimony that you had already given more than a month before?

A The meetings were all close together. It's hard to distinguish and to say what was said at any one--

Q March 30, 1976, how long did that meeting take?

A About two, three hours.

Q April 14, 1976, how long did that meeting take?

A About two, three hours.

Q And then yesterday -- well, that would only have been a few moments because you were here in court most of the day; correct?

A Correct.

Q Did you meet with Mr. Kaplan last night?

A After.

Q How long did you meet with him after?

A About an hour.

Q Okay.

A They were out most of the time. It was more waiting.

A So all told, at these nine meetings you have had approximately thirty hours of conversation? Is that a fair --

A It's an estimate. Yes. Fair. Including the Grand Jury testimony and the testimony here. Yes.

Q Okay. That chart, did you aid in the preparation of that thing?

A Just gave them the raw data.

Q When did you first see it?

A I think probably it was on the -- I imagine on the 30th.

Q Excuse me. I am sorry. I was looking at my notes.

A Oh, I'm sorry. I think it was March 30th.

MR. GILLEN: Excuse me just one moment, your Honor.

THE COURT: Yes.

Q Now, I show you 3500-18. This is my writing on here, Mr. Pomerantz. But the -- there is another one that Mr. Kaplan has that has a sticker on it. Is that something prepared by you?

A Yes.

Q I see. May I, sir, please.

Is that a memorandum that you prepared as a result of an interview of September 17, 1970 with some reporters from a newspaper?

A Yes.

Q N , who was Commissioner of Public Works when you became deputy commissioner?

A Gibbons. Eugene Gibbons.

Q And was it Mr. Gibbons who appointed you as deputy commissioner?

A Yes.

Q Did you tell or did you make the statement that Gibbons was completely nonpolitical?

A I think I made that statement. Yes.

Q You made it in your own memorandum; si that right?

A Yes.

Q Well, here --

A Let me look at it.

Q It's in your own memorandum.

A It's also 1970.

Q But it's made to yourself?

MR. KAPLAN: I object to any argument with the witness, your Honor.

THE COURT: No. This is a question.

THE WITNESS: Yes.

THE COURT: This is a memorandum to yourself?

THE WITNESS: Yes.

Q It was for your purposes, correct?

donation in consideration of getting approval as a sub-consultant?"

And you answered, "No, sir."

Are you -- you still say that statement was true?

A I think literally it's true. Literally, it's true. As I said before, it's not quite candid, but literally, it's true.

Q Because it's the difference of -- because you don't have a dictionary as to the difference between contribution and donation?

A And it was asked in such general terms.

Q Is that a general term when they asked you -- first they --

A As a subconsultant.

Q All right. But first they asked you about a political -- any public official you were asked, and you said, No; isn't that correct?

A I never thought of Mr. Christenfeld in terms of a public official. Only asa Party official.

Q Fine.

A But I do realize that he's Commissioner of Elections.

Q Okay. But you were asked in that Grand Jury

Nothing further.

THE COURT: You can step down, Mr. Pomerantz.

MR. GILLEN: Can we have our break now?

THE COURT: We will take our mid-morning break now before the next witness. The jury goes back to the jury room.

And please do not talk about the case.

(The jury leaves the courtroom and the following takes place out of the presence of the jury.)

THE COURT: Here are some exhibits I will give back. I guess the part Mr. Pomerantz was referring to in the Exhibit 11 on page 3, it says that the architect shall provide the services of a duly licensed competent engineer or engineers, et cetera, satisfactory to the county.

So if anybody wants to refer --

MR. KAPLAN: Yes, that's the provision, your Honor.

I would like to put Mr. Pomerantz on the stand just for a voir dire concerning attorney's notes so there will not be an Appellate problem because an impression might be left by Mr. Gillen improperly that the witness in some way ratified these notes, and that's not the case.

THE COURT: Well, there is a Brady problem now whether Mr. Pomerantz told you something that you thought wasn't true and then changed his story and I think we ought to have Mr. Pomerantz available at a later time.

MR. KAPLAN: I will turn over my notes to your Honor in camera for that purpose, your Honor, for your Honor to --

MR. GILLEN: Your Honor, most respectfully, I think it's been held in a number of cases -- I don't know them offhand -- that Brady material is for the defense to determine what is Brady and what is not. I have conducted investigations and I have an idea of what I am doing here. And with all due respect to the Court --

THE COURT: In other words, your point is that before the trial is complete you should be able to examine the entire Government file in order to see if there is any Brady material?

MR. GILLEN: I am not saying that, although I don't see any reason why not.

What I am saying is this, your Honor: an attorney in preparation for the defense, he is the one that puts in the time.

With all due respect to the Court, the Court is

arbiter.

THE COURT: If you want me not to examine it in camera I won't.

MR. GILLEN: Iam not saying that, your Honor. I am not saying that. I have no objection to this Court examining anything in camera. But at least on Brady, your Honor, it should be the defense's determination. There are many other things coming in here, your Honor, that your Honor is not aware of. Mr. Kaplan has done 14, 15 months of work on this and I have done a number of months. We are the ones who know.

MR. KAPLAN: There is nothing in my notes that constitute Brady material. I will be happy to turn it over to the Court for any inspection tc determine that. He never ratified the notes. I just used my own notes for my own purposes. And any insinuations that the notes were used for any other purpose is not correct.

MR. GILLEN: I am not insinuating. I am saying from pure hard experience when you have nine meetings with somebody, something changes along the line.

MR. KAPLAN: I didn't take notes on nine occasions.

MR. GILLEN: I'm sure you didn't.

THE COURT: I think you should submit the notes to me in camera and I will see if there is anything close enough to see if there may be any Brady involved.

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MR. GILLEN: Yes, sir.

(A recess was taken.)

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(At 11:50 a.m. the following occurred with the absence of the jury):

THE COURT: All right, is your next witness ready?

MR. KAPLAN: Mr. Noonan just came, he works with Mr. Christenfeld in the Board of Elections. He asked me before he takes the stand that he would like to see his testimony one more time, he said he would like to review his testimony.

Now, your Honor, I don't know what the procedure is but I am just advising the Court. It is very small Grand Jury testimony but he wants to see it.

THE COURT: Let him look at it.

I have always believed that a person has a right to see his Grand Jury testimony.

MR. GILLEN: I agree with that, your Honor.

(At this point Mr. Kaplan left the courtroom.)

(Mr. Kaplan then returned.)

MR. KAPLAN: Your Honor, these are the notes that I have.

THE COURT: Mark them as a Court's exhibit.

MR. KAPLAN: Should I put my own name on it to identify them?

THE COURT: Yes, suppose you do that.

THE CLERK: Court's Exhibit 3.

MR.KAPLAN: If we have anything else which we come across, we will certainly turn it over.

That is all we have found right now.

MR. MARCUS: I will make a search of my files and to the extent that I have anything, I will turn it over later today.

THE COURT: All right.

MR. KAPLAN: Did you want to look at them?

THE COURT: Yes.

Mark them.

THE CLERK: Yes,I did, they are a Court's exhibit.

MR. KAPLAN: Your Honor, I would also like to turn over at this point the Samuel Green FBI 302 Report and the Grand Jury testimony of Samuel J. Green and ask that they be marked as 3500 Exhibits.

THE CLERK: 3500-28 and 3500-29,respectively.

MR.GILLEN: Is Mr. Green the next witness, your Honor, or Mr. Noonan?

I don't know which to read first.

THE COURT: Mr. Noonan is the next witness.

Is Mr. Noonan ready?

MR. KAPLAN: I think he will be ready in just about two minutes, your Honor.

THE COURT: All right, all right.

MR.KAPLAN: A further document, a statement of Samuel J. Green witnessed by Brendan Sullivan and Samuel Orr.

THE CLERK: 3500-30.

MR. KAPLAN: Your Honor, do you have your copy of the 302? I don't believe we have an extra copy.

THE COURT: Here.

(Document handed to Mr. Kaplan.)

THE COURT: All right, see if Mr. Noonan is ready.

MR. MARCUS: Yes, your Honor.

(At this point Mr. Noonan entered the courtroom.)

THE COURT: All right, will you bring the jury in, please.

Let Mr. Noonan sit in the first row for a minute.

(At 12 noon the jury took its place in the jury box.)

THE COURT: Mr. Kaplan, you can call your next witness, please.

MR. KAPLAN: The Government calls Donald Noonan.

THE COURT: Come forward, please.

THE CLERK: Step up here, please, sir.

State your full name, please.

DONALD JOSEPH NOONAN, called as a witness on behalf of the Government, being first duly sworn by the Clerk of the Court, testified as follows:

THE COURT: You may be seated.

DIRECT EXAMINATION

BY MR. KAPLAN:

Q Mr. Noonan, where do you present reside?

A 137 Argyle Road, Stewart Manor, New York, and a supplemental home at 7 Cox Cove Road, West Hampton Beach.

Q What is your present employment, Mr. Noonan?

A I am Assistant to the Commissioner of the Nassau County Board of Elections.

Q How long have you held that particular position?

A Five or six years.

Q Who was your immediate supervisor in that position?

A Mar[illegible] Christenfeld.

Q What is Mr. Christenfeld's position?

A He is the Commissioner of the Board of Elections, Nassau County.

Q Can you give us a general idea of what the Board of Elections is, what it does?

A The Board of Elections conducts, supervises and runs elections in the County of Nassau.

MR. GILLEN: Well then --

Q Did you have interviews with Mr. Kaplan on these dates?

A I have had four interviews with Mr. Kaplan.

Q Did he take notes during these interviews?

A Yes, he did.

MR. GILLEN: I ask --

Q Do you know whether the Government has a report of these interviews?

A I know he made notes on a yellow pad.

MR. GILLEN: I will ask if there are any reports, your Honor, of these interviews.

MR. KAPLAN: There are no reports.

MR. GILLEN: And then we will get the date from the reports.

MR. KAPLAN: There are no reports.

MR. GILLEN: Does the Government have the dates of the specific interviews?

MR. KAPLAN: Am I testifying? I didn't --

MR. GILLEN: I am just asking.

THE COURT: Well, ask the witness.

MR. KAPLAN: It is rather improper.

Q Do you know the first date, Mr. Witness, of the first interview?

talking about work that you did for the party, the work you did for the Board of Elections; is that right?

A Yes.

Q Now, as to the work you did for the party, where was -- where would the work actually be? Was it confined just to the county headquarters?

A No.

Q Would you go to restaurants to arrange for affairs, dance halls, street corners to arrange for rallies, things like that?

A Yes.

Q Isn't it a fact that a great deal of your time is spent in that fashion?

A Yes, it was.

Q Was it not part of your party's duties to do these types of things?

A I felt it was, yes.

Q And this is -- this is time consuming, is it not, Mr. Noonan?

A Yes.

Q Lining up people, lining up things like that?

A Yes.

Q Even these cocktail parties that Mr. Kaplan asked you about, how many party workers would have been at

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these cocktail parties? Never mind the hierarchy. The Indians.

A Five or six.

Q And they would -- I think you said they would park cars, things of that nature?

A Oversee the physical operation of it. See that these things were done properly.

Q Were these people in and out when all the other guests were at the cocktail parties?

A Yes.

Q Was there anything hidden from these people?

A No.

Q This was an open type of thing; isn't that correct?

A Yes.

Q Were there any political deals made at these cocktail parties, if you know? Secret type of things?

A Not that I know of.

Q But they were for fund raising; is that right?

A They were fund-raising events.

Q Now, let me ask you this: You have been involved in politics for a number of years; is that correct?

A Yes, sir, I have.

Q Is there any other means by which a political party can sustain itself other than by fund raising?

A Not that I know of.

Q In the years '68, '69, '70 and '71, before we had this check-off system and I think the matching funds, there was no such thing?

MR. KAPLAN: I object to him testifying.

THE COURT: No, that is public knowledge. I think it has nothing to do with county elections.

Q All right. Well, did the federal government give any money to people running about that time in Nassau County?

A No.

Q Did the state government give any money to the political parties?

A No.

Q Did anybody give any political party other than those who supported the party of their choice?

A It was very rare. I would say no.

Q All right. So fund-raising was an integral part of the political system at that time in Nassau County?

A Yes, it was.

Q Okay. Without the fund-raising, you wouldn't have a party; is that correct?

A That's correct.

Q Neither the Republicans nor Democrats?

A That's correct.

Q You mention a man, Al Myers; is that correct?

A Yes.

Q All right. There's been testimony, sir, that Mr. Myers was also on Mr. Pomerantz' payroll. Now, during the period of time you were receiving money from Mr. Pomerantz, did you know that Al Myers was on the payroll?

A No, I did not.

Q Did you ever tell Al Myers that you were receiving money from Mr. Pomerantz?

A No.

Q Did you ever have any discussion with Mr. Kaplan about that as to what your knowedge would have been about Myers?

A I think it came up during one of our interviews, yes.

Q Was there any argument about it?

A We had a discussion. I wouldn't classify it as an argument. I just said no.

Q Did Mr. Kaplan accept the fact that you didn't know that Myers was on Mr. Pomerantz' payroll?

MR. KAPLAN: I object to that, your Honor.

THE COURT: Overruled.

MR. KAPLAN: As to what was accepted by an Assistant United States Attorney.

THE COURT: Overruled.

MR. KAPLAN: The Government calls Samuel J. Green.

Your Honor, I will offer the chart in evidence.

THE COURT: I think I will receive it into evidence. To the extent there may be any differences between that and the checks, the checks will govern and defense Counsel can bring it out.

I think we might as well have the chart turned away, there is no reason to have it during Mr. Garine's testimony.

MR. GILLEN: I almost tripped over it, your Honor. I have never seen such a big job.

THE COURT: Just stand there a minute Mr.Green, please.

S A M U E L J . G R E E N , called as a witness on behalf of the Government, having been duly sworn by the Clerk of the Court, testified as follows:

THE COURT: All right, sit right down here, Mr. Green, . and speak loud enough so everyone in the room can hear, please.

DIRECT EXAMINATION BY

MR. KAPLAN:

Q Mr. Green, where do you presently reside?

A In Squickley, Pennsylvania.

mine which would be best for the client and for the budget.

Q And the final design is the next design after the preliminary design; is that correct?

A Yes, the final design has to do with the detailed construction drawings and documents, their main purpose being that the client will be able to take competitive bids and all the bidders will be bidding on the same.

Q The actual construction, in other words?

A Yes, sir.

Q Now, when you opened up the Hicksville office, was that before or after you received this contract or was it about the same time?

A Approximately the same time.

Q By the way, when you received this contract in February 1968, did you get notification informally some period of time before?

A Yes, sir.

Q That is Feburary 1968?

A Yes.

Q And prior to your receiving the contract, had you had occasion to meet various people in Nassau County such as in the Department of Public Works and other people?

A Yes, sir.

Q In connection with the operations of the Hicks-

ville office, by whom were the employees of the Hicksville office paid?

A The employees were paid by the Squickly office and we maintained a petty cash account in New York, but basically checks were drawn from the Pittsburgh offices.

Q What was the business relationship between the Pittsburgh and Hicksville offices?

A The Pittsburgh offices kept all the records and books of account and had general supervision over the work and over their financial policies.

Q Were contracts, correspondence, etc. and the like sent either by mail or by persons travelling between Pittsburgh and Hicksville?

A Yes.

Q Was this done in the regular course of business?

A Yes, sir.

Q Who approved the major policy matters in connection with the operations of the Hicksville office?

A Basically, I did.

Q But you were in Pittsburgh.

A Yes, sir.

Q What percentage of the work of the Pittsburgh office was performed in Pittsburgh?

A A minor percentage, possible 15 per cent or 20.

Q Did persons communicate between Pittsburgh and New York in the regular course of business in the performance of the Hicksville operations?

A Yes, sir.

Q Were the telephones and mails regularly used to transmit design plans, correspondence, contracts and the like relative to contracts performed by the Hicksville office?

A Yes, sir.

Q Now, you said you kept a bank account?

A Yes, sir.

Q Where were the bank accounts kept?

A Well, there was an account at one of the banks near the office, I don't remember the exact name at the moment, but we also had our general account in our Pittsburch office.

Q Where was the flow of money to?

A The receipts from our billing as they came into the office would be deposited in a bank in Nassau County and then the checks would be drawn on it to our Squickly account and they would then make out the checks for payroll and expenses from there.

Q So that the money went back to Pittsburgh?

A Yes, sir.

Q And the payroll records were in Pittsburgh?

A Yes, sir.

Q And were checks drawn on the Pittsburgh account, the payroll checks?

A Yes, sir.

Q Where were the books and records of the Hicksville office kept?

A In Pittsburgh. We might have had some records here, but primarily the financial records were in Pittsburgh.

Q In connection with the receipts and disbursements of the Hicksville office, where were the cash returns filed?

A In Pittsburgh, although I think there were some state papers.

Q Federal income tax returns were filed in Pittsburgh; is that correct?

A Yes, sir, they were filed in Pittsburgh.

Q Did there come a time in connection with the performance of what is known as the Massapequa sewage district contract that in connection with the performance of that you expanded the operations of the Hicksville office.

A Yes, sir.

Q And give us a general idea as to how large the office became.

A Well, we grew from about 3 or 4 people when we

started until we had somewhere between -- we had somewhere between 20 and 30 people.

Q Were many of these people engineers?

A Yes, sir.

Q How did it come about that you would grow from an office of three to an office of twenty?

A I am sorry?

Q How would it come about, explain it to the jury, if you will, how it would come about that you would grow from an office of 3 or 4 to an office of 20 in a very short period of time.

A Well, the demands of any contract have a time stipulation and you must meet the time set by the client. In order to do so, you have to build up your staff, and we did that to the point where we met our deadline.

Q In other words in connection with the Massapequa Park contract, did you have occasion to expand your staff to perform this particular contract?

A Yes, sir.

Q Now, you said you received the Massapequa contract some time early in 1968.

Did you commence to work on it at that point in time?

A Yes, sir.

Q Now, in the year 1968, did you have any other work in the Hicksville office of a substantial nature?

A No, sir.

Q What percentage of the work was constituted by the Massapequa Park contract?

A Over 90 per cent.

Q What time would you say, what percentage of time of the employees of the Hicksville office were spent in connection with the performance of this particular contract?

A I would say over 90 per cent of their time.

Q By the way, do you happen to know the fees involved in this particular contract?

A It was over $300,000.

Q That was the amount contracted for?

A I am sorry.

Q The amount contracted for was $300,000?

A Yes.

Q Did you subsequently receive fees in excess of $300,000?

A Yes, yes.,

Q Do you recall how much?

A Well, we received a fee for a revision of the design, and eventually we received a fee for doing the final design.

Q So you did both the preliminary and the final; is that correct?

A Yes.

Q So how much was the generated in connection with the contract?

A Approximately $900,000.

(continued next page)

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Q Now, in connection with the first eighteen months of your operation, 1968, the first twelve months of 1969, did there come a time when you observed anything with respect to the viability of the Hicksville office?

A Yes. It became very evident that we were subject to serious default in business in the sense that we had one major contract. It was coming to an end. We didn't seem to see any new business in sight.

Q Was the work sort of --

A The work --

Q (Continuing) -- subsiding?

A Yes. The job.

Q Into 1969?

A It was -- it was being nearly completed.

Q In that regard, what did you observe concerning Mr. Zeloff and the other employees in the Hicksville office?

A They became very alarmed at the situation.

MR. GILLEN: I object as to the --

THE COURT: Yes. Tell us what they said. Tell us what Mr. Zeloff said. Not how he felt.

THE WITNESS: Mr. Zeloff talked with me and told me that they were out of -- practically out of work. And that he would have to consider laying off people unless we were able to find new work.

Q Now, during this period of time, the first eighteen months or so, did you have occasion to seek further work from the County of Nassau?

A Yes, sir. I had encouraged Mr. Zeloff to go to the Public Works Department to try to seek new work. And he had come back to me and told me that he was unable and unsuccessful in getting any follow-on work, and that if we were to get any work I would have to come in and see Mr. Christenfeld.

Q Mr. Christenfeld?

A Yes.

Q Now, during this period of time, the first eighteen months or so, did you have occasion to do anything else with respect to obtaining work or seeking work other than the Department of Public Works?

A Yes. We were constantly seeking other work in either private industry or other areas. But we had not been successful.

Q Did you have occasion to attend cocktail parties and dinners?

A We were very active in participating in the life of the area, especially political life, attending the cocktail parties and the dinners that were held at various times of the year.

Q Did you --

A And try to meet as many people as possible.

Q Did you and Mr. Zeloff have an occasion to attend such cocktail parties or dinners?

A Yes.

Q Were there any cocktail parties or dinners where architects or engineers were in predominance?

A I don't know if they were in predominance. But I did meet a number of them.

Q What I mean by in predominance, as opposed to other particular professions.

A I don't know whether they were more than any other profession or not.

Q But you had occasion to meet a number of architects and engineers; is that correct?

A Yes.

Q Did you have occasion to contribute to the journal ads and things of that nature?

A Yes, sir.

Q Now, you said that Mr. Zeloff told you, you'd have to see somebody; is that correct?

A Yes.

Q Explain that to the jury.

A Well, he had exhausted -- he told me every --

MR. GILLEN: I object to this. This is the same testimony.

THE COURT: Yes. If you want to ask him whether they met and what took place, you can do that. But I think that's the next step to cover.

Q Well, Mr. Green, did you learn who the County Executive of Nassau County was?

A Yes, sir.

Q Who was that?

A The County Executive was Mr. Nickerson.

Q Did you learn who -- what party he was a member of?

A Yes, sir. The Democratic Party.

Q Did there come a time when you learned anything with respect to awards of personal service contracts in Nassau County?

A Yes.

Q What was that?

A I learned that if you wanted to receive any new work in Nassau County, you would have to go and see Mr. Marvin Christenfeld.

Q Did there come a time when you learned that Mr. Christenfeld had a particular position in the Democratic Party?

A Yes. He was Chairman of the Democratic Nassau County -- I am not sure if it's committee or whatever it is called.

Q Do you know where his offices were located?

A Yes.

Q Where was that?

A Mineola Boulevard.

Q Did there come a time when you visited Mr. Christenfeld?

A Yes, sir.

Q Can you give us a general idea as to what the period of time in question we are talking about was?

A It was in 1969, I believe.

Q What time of the year was it?

A I think it was in the summer or fall of '69.

Q Had you learned that Mr. Christenfeld had just become party chairman?

A Yes, sir.

No, I am sorry, sir. I learned at some time or other that he had become party chairman. I don't remember exactly when I learned that.

Q Now, you said in connection with what you learned about the award of personal service contracts in Nassau County, you answered a question previously; is that correct, as to who

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you had to see?

A Yes, sir.

MR. GILLEN: I object to questions that have been two or three times asked. It's been asked and answered, sir.

MR. KAPLAN: I can ask another --

THE COURT: Sustained. But you're leading up to something. I thought you were coming to something some time ago. Move along, please.

Q Now, you met Mr. Christenfeld; is that correct?

A Yes, sir.

Q Explain to us the purpose in going to see Mr. Christenfeld.

A I --

MR. GILLEN: I object to the purpose. If he can say what was said --

THE COURT: Ask him what each said and what each did, please.

Q You had a meeting with him; is that correct?

A Yes, sir.

Q Who was present at the meeting?

A Just Mr. Christenfeld and myself.

Q And initially what did you say to him?

A Told him --

Q When you met him.

A We first spoke about the social amenities and chatted. And then I proceeded to explain to Mr. Christenfeld our position in the New York office. I took the means, of course, to elaborate on how well we had completed the first contract, and the staff that we had built up, and the capabilities we had not only there, but in the total company to undertake large projects. And I advised him that we were practically out of work and that we were in dire need of new -- a new contract.

Q In connection with your firm, did you tell him anything with respect to your firm, where it was located, matters of that nature?

A Yes, sir. You mean all our firm? All our offices?

Q What did you tell him about your firm generally, if you can recall?

A I told him we had a large staff. We had the capability to undertake this kind of work and that we were in need of it.

And he said, well, they did have work of that nature to give out.

Q Now, did you have occasion in the course of your conversation preliminarily to know whether Mr. Christenfeld

knew who you were and knew who Mr. -- withdrawn -- knew who Green Engineering Company in Pennsylvania was?

A Yes, sir. There was no doubt in my mind that he knew who I was. Certainly knew who he was.

Q How did that come about?

A Well, over the years we had seen each other once or twice and we had talked about the firm. And he certainly must have known about our activities in the Public Works Department in Nassau County.

Q Did he indicate to you in any way that he knew you had this Massapequa Park contract?

A Yes, he knew we had it. Knew that we had completed it and knew that we had done a satisfactory job.

Q At the time you said you were contributing to the Democratic Party; is that correct?

A Yes.

Q Was he aware of that?

A Yes, sir.

Q Can you explain that to the jury?

A Well, we had attended the various dinners and cocktail parties, and at least one of them I had run into Mr. Christenfeld. And we had exchanged pleasantries. So my presence there would indicate to anyone that -- acknowledge to Mr. Christenfeld that I was a contributor to the Democratic

Party.

Q Were you on the mailing list of contributors?

A Yes, sir. Yes.

Q In other words, would you receive requests in the mail?

A Yes.

Q In connection with the Hicksville office, what did you tell him about the Hicksville office in this point in time?

A I told him that we were out of work, sir, that we were out -- that if we didn't get any work, we would be forced to remove families that we had -- a couple of families that we had settled in New York back to Pennsylvania, and we would have to dismiss the rest of them who had -- some of them had located themselves within easy driving distance of the office.

Q What did Mr. Christenfeld say to you?

A Well, Mr. Christenfeld said it so happened that they were giving out work in the field in which we had been working and that a number of contracts had gone out to other consultants. And I expressed my disappointment at not having gotten any of them.

Well, he said it so happened two sections of a particular program -- the areas had been divided into sections,

and each section constituted a separate contract. And that there were two contracts that had not been assigned.

He further stated that there was no reasonwhy we couldn't handle those particular assignments and that they were still unsigned.

Q Then what did he say?

A Then, I, of course, was interested in finding out about getting those jobs at least.

He said, well, those jobs would have to generate and cost anyone who undertook them 20,000 for the -- one of them and $24,000 for the other.

Q 20,000 for the first contract and 24,000 for the second?

A Well, one --

Q One of the two.

A One was larger than the other. And it was related to the size.

Q What was the total amount discussed?

A $44,000. And he further thought that two jobs ought to be given out at one contract to one consultant.

Q When you say generate cash -- I think you used that term -- explain to the jury --

MR. GILLEN: Objection. I don't think he said generate cash.

MR. KAPLAN: I don't know what the term was.

THE WITNESS: It was --

MR. KAPLAN: If he can read it back.

THE COURT: Yes. He said one would have generated 20,000 and the other 24,000.

Were those his words?

THE WITNESS: The word "generate" may not be exact, sir. But the idea was that -- my impression of what was said was that I would have to pay $44,000 primarily in cash. That was my first impression of what was said.

Q Well, in connection with the $44,000, what exactly did he say, if you can recall?

A He said he would -- he said that the party required forty-four, or that he would require $44,000 in order to give out those two contracts.

(continued next page)

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BY MR. KAPLAN:

Q Who would have to pay the $44,000?

A Yes sir.

Q Who would have to pay?

A I would. Whoever took the jobs.

Q Who would you have to pay it to?

A To Mr. Christenfeld.

Q Did he tell you anything with respect to whether or not you could have the jobs if you didn't pay?

A No. He definitely told me that if I didn't pay $44,000 I would not have the contracts.

Q What was your reaction?

A I was quite shocked by the amount of the request, by the businesslike manner in which it was proposed. And I had a feeling of despair. And I told him that I did not see how we could possibly make that kind of payment.

Q When you say you were shocked, what exactly did you mean by the term, you were shocked?

A I was shocked by the amount of the -- we had never heretofore encountered a request for a sum of money for getting preference on a job of that size and in that direct manner.

Q Had you encountered the system of paying public officials elsewhere?

A Yes.

Q Had you made these types of commitments to public officials elsewhere?

A We had in many cases made commitments. They were of a much smaller nature and somewhat perhaps different in request.

Q Had you paid public officials?

A Yes.

Q Prior to that time elsewhere?

A Yes sir.

Q By the way, what was the tenor and tone of the conversation between yourself and Mr. Christenfeld?

A Well, our relationship was always cordial. But it was in this particular instance strictly business. On a take it or leave it basis.

Q Was it a businesslike conversation?

A To that point, as far as the $44,000 was concerned.

Q Did you commit yourself at that point after hearing Mr. Christenfeld say that he wanted 44,000?

A No, I did not. I was confused, to say the least. And I told Mr. Christenfeld that I would like to take some time and leave his office and take time to think about it. ANd he suggested that that might be a good idea

and that I do just that.

Q You went back and left his office in that point in time?

A Yes. I left his office and I drove around for about a half hour thinking about the various possibilities and the consequences of taking the job, not taking the job. On the one hand I -- if I didn't take the job, I would have to close up the office, remove all the people and shatter some lives.

MR. GILLEN: I object.

THE COURT: Yes. I really -

MR. GILLEN: This is getting a little melodrmatic.

THE COURT: No. You didn't object to the question. But I think really, Mr. Kaplan, you ought to deal with what happened between you, Mr. Green and Mr. Christenfeld.

MR. KAPLAN: I am just asking for his state of mind.

THE COURT: I don't think state of mind is that relevant. I know what you have in mind.

Q What were the consequences to your business of not making this commitment?

A I would have to close up the office, take my

loss and write it off.

Q Would you suffer any economic loss as far as you were concerned?

A Sir?

Q Would you suffer any economic loss and financial loss?

A Definitely.

Q Would you get other county work if you did not take this commitment?

A I don't think so. Because we had tried and we had not succeeded.

Q Did there come a time when you returned to Mr. Christenfeld's office?

A Yes sir. I returned to his office and I told him that after thinking it over I decided to agree to the terms and do the best I could to meet that 44,000 commitment if I was favored with the two contracts.

Q By the way, how long after you left his office did you in fact return?

A Somewhere between a half hour and an hour.

Q Now, in the conversation that you had on the second occasion, on the return, what did you say to him and what did he say to you?

A I told him that it would be difficult, but --

5 Green-direct

to try to pay $44,000 in cash. And I was hopeful that I could find some means of doing it. And he assured me that some of the things that we did in regards to buying tickets for various dinners and cocktail parties, taking ads and so forth, were part of that $44,000, and that it would not be as difficult to meet it as I contemplated.

Q You were making contributions all along the way?

A Yes.

Q Going to cocktail parties, dinners, taking journal ads?

A Yes.

Q Now, when you said difficulty in generating cash, explain what that means to the jury.

Well, for every dollar of cash that you use in a corporate structure like ours, it meant that you had to earn $2. And so in order -- I did not take enough of a salary myself to be able to take that kind of money out of my pocket. So it meant that I would have to call upon the assistance of some of my key people to help create a situation whereby I would get some money for them to generate cash.

Q In paying out cash, would this be off the top of the business, off the top of the profits, paying out cash?

Do you understand the question?

A No sir.

Q I will withdraw the question.

In connection with your conversation with Mr. Christenfeld, what if anything did Mr. Christenfeld indicate or say to you concerning his influence over the award of personal service contracts in Nassau County?

A He made it clear without requiring a great many words that he was in a position to give out that work. That work was his to give out.

QD Did there come a time when you caused cash to be generated in order to meet the commitment?

A Yes sir. I involved five or six of our key people in our Pittsburgh office to give back part of their bonus in order to provide a fund which was used for this purpose.

Q To get cash out of the business to make payments?

A Yes sir.

Q Let's give the jury a better idea as to exactly what this fund was all about. You had special employees; is that correct, such as vice presidents?

A Yes.

Q These are what you call key employees?

A Yes. These were people who had been with the

company for many years and whom we would normally award at the end of the year -- if there were profits, that they shared in the profits in the form of bonuses. But when the need for this type of thing arose to the extent that it arose, we gave them an extra bonus. And what we did was, we assumed that they were all in about the one-third -- 33 percent tax bracket. So we said to them, you keep one third for taxes, keep one-third for yourself, and put one-third into a fund for the payment of these type of marketing expenses.

Q To public officials?

A Yes.

Q In connection with those payments, let's say, for example, when a $3,000 payment or bonus, as you said, to a vice president in your firm, what would he do with the $3,000?

A He would keep $1,000 for taxes, and 1,000 for himself, and would put a thousand dollars into a fund which was generally administered by our controller.

Q What was his name?

A Stewart Freeman.

Q Was Mr. Freeman involved in this county procedure whereby the cash could be taken out in this manner? That is, out of the company?

A Yes sir.

Q And the employees, of course, knew about this? Is your statement --

A These employees, yes.

Q And the money was returned to Mr. Freeman and yourself?

A Yes.

Q What did you do with the money?

A I generally kept it in a locked drawer. I also had a vault in the bank. And sometimes if I -- I would take it over there.

Q By the way, did you ever use your own money out of your pocket?

A Yes.

Q Write your own checks to cash in order to get cash to pay these commitments?

A Yes sir.

Q Now, in connection with this bonus employee plan, as you called it, when did it originate?

A Originated about 1967, approximately.

Q Before Mr. Christenfeld?

A Yes sir.

Q In connection with these bonuses and in connection with the commitment to Mr. Christenfeld, what did

you do when you got back to Pennsylvania?

A I talked this over with Mr. Freeman and told him that the size of the commitment would take some years to meet, and that that would require keeping a record of it, as I didn't think I could possibly remember it all. I generally did not confide in anyone about these matters. This was too large a commitment for me to try to keep straight.

(Continued next page.)

Q Well, was Mr. Friedman involved in keeping records as to any other commitments or dispositions you may have made to other public officials?

A To some extent he was, yes.

Q What, if anything, did you tell Mr. Friedman in connection with this particular commitment?

A I told him the amount involved.

I told him that -- to keep a record.

I told him -- he knew -- he didn't discuss these kinds of matters with me at any great length.

Q Did you tell him the name of the person involved?

A Yes, sir.

Q Did you tell him the amount of the commitment?

A Yes, sir.

Q Did there come a time when Mr. Friedman and yourself caused cash to be generated out of the fund to make payments?

A Yes, we did.

Q Do you recall anything with respect to making a payment, initially?

A Yes, sir.

Q What was that?

A Well, I came to Long Island, to Nassau County and had a meeting with Mr. Christenfeld --

MR. GILLEN: I will stipulate if I just might see it.

THE COURT: Yes.

MR. KAPLAN: I offer it in evidence at this point.

THE COURT: Look at it, Mr. Gillen.

(Exhibit handed to defense counsel.)

(Pause)

MR. GILLEN: I have no objection.

THE COURT: Mark it, please.

THE CLERK: Government Exhibit 14 marked in evidence.

(So marked.)

Q In connection with the file, Mr. Green, did you have occasion to draw a -- what is known as a retainer letter and send that to Mr. Peltz?

A Yes, sir.

Q That's one of the letters in the file; is that correct?

A Yes.

Q Can you explain this letter to the jury?

THE COURT: Let him read it.

MR. KAPLAN: I am going to ask as to whether he had any conversations with Mr. Friedman in connection

with the drawing or drafting of that letter or the actual sending of that letter.

THE COURT: Ask him that.

THE WITNESS: Mr. Friedman and I discussed this letter and we put it into the file to appear to make Mr. Peltz a legitimate legal counsel for the firm.

Q By the way, who was legal counsel for the firm during that period of time?

A Friedman & Friedman, Pittsburgh.

Q- Did they have occasion to handle your business during the period of time that Mr. Peltz was paid certain $500 fees?

A Yes, sir.

Q - Did there come a time when checks were sent to Mr. Peltz?

A Yes, sir.

Q- Do you recall when it was initially that the first check was sent? You can refresh your recollection from the file.

A I believe it was early 1970 but -- it appears that the first check was sent -- one of the early ones is April 8, 1970.

Q+ Do you happen to know if there was a check that issued February -- excuse me -- March, right after your

Q And what was the nature of that conversation?

A That he would see that she gets paid regularly and that a record would be kept of her payments and be used to subtract from the total commitments which I had made with Mr. Christenfeld.

Q Did there come a time -- by the way, how much money was paid over the course of years to Mrs. Mrozack?

A About $6,000, six to eight thousand dollars, I believe it is closer to six.

Q Did there come a time when both Mrs. Peltz -- excuse me -- Mr. Peltz and Mrs. Mrozack were terminated in that no further payments were made?

A Yes.

Q Was that in early 1973?

A Yes.

Q Can you tell the jury how it came about that they were in fact terminated?

A We had completed a phase of work and there had been a complete change in the political set-up in the county, there was nothing, I think our commitment had been fulfilled and there was nothing further we could gain from having them on the payroll.

(continued next page)

Q And will you tell the jury and explain if you will the fact that Mrs. Mrozack and Mr. Pelz were maintained in '71 and '72 and the first two months in 1973?

A Well, we had made the commitment with Mr. Christenfeld, I had made the commitment with Mr. Christenfeld and we had -- I had never not met a commitment and so therefore we continued making these apyments until I had fulfilled the word I had given Mr. Christenfeld.

Q By the way, did you know Mr. Christenfeld would be back in power after the next election?

A No, I didn't know, but he was a very influential man in the county and I certainly wanted his good will.

Q In connection with the commitment, did you have occasion other than the payments that were just mentioned to make other cash payments to Mr. Christenfeld?

A Yes.

Q When did you make those?

A I believe, I believe I had made another payment to him in 1970 and one in early '71 --

MR. GILLEN: Are we talking now of other payments, other than what already were described?

I don't know.

THE COURT: I think that is the case, is it not?

THE WITNESS: Yes.

Internal Revenue Service a corporate income tax return for the year 1970?

A Yes sir.

Q Was that return filed with the District Director in Pennsylvania somewhere?

A Philadelphia.

Q And the corporation tax returns have different dates than the individual returns, don't they?

A Yes sir. In our case.

MR. GILLEN: I have no objection to the return, your Honor.

THE COURT: Do you have an objection?

MR. GILLEN: None.

THE COURT: All right.

MR. KAPLAN: I will offer the return for the year 1970, ending on or about March 31, 1971.

THE CLERK: Marked Government Exhibit 21 in evidence.

Q In connection with this tax return, by whom was it prepared?

A Most of the tax returns during this period were prepared by the controller, Mr. Friedman, and signed by myself as president.

Q In connection with the payments to Harry

Peltz, Jr. and Olga Masarack, are they reflected as business deductions in the tax return for that year?

A Yes.

Q In connection with the payments to Harry Peltz, Jr., how were they reflected?

A They are reflected as an item of corporate expense under professional services.

Q Did Mr. Peltz render any professional services?

MR. GILLEN: Objection. This has been gone over a number of times.

THE COURT: All right, once more.

Did or did not?

THE WITNESS: Did.

THE COURT: What?

THE WITNESS: Yes, we did.

THE COURT: No. Did Mr. Peltz render any professional services?

THE WITNESS: No.

Q And you took this as an ordinary and necessary business deduction?

A Yes.

MR. GILLEN: Objection. It's been asked and answered.

THE COURT: Yes.

MR. KAPLAN: I am just finishing, Mr. Gillen.

THE COURT: Go ahead.

THE WITNESS: Sir?

Q And the same with Mrs. Mazarack?

A Yes.

Q How were her deductions takeN?

A As part of the wages and salaries paid to employees.

Q Did you know these returns were false and fraudulent as to those matters?

A To those matters, yes sir.

Q By the way, they were included on the other returns for consecutive years, '71, '72 and '73; is that correct?

A Right.

Q Have any promises been made to you in connection with your testifying?

A Well, I am under a grant of immunity.

Q Is that a court-ordered grant of immunity?

A I suppose so. But I don't know. Because this was not by my arrangement. Between counsel.

Q In other words, it was a matter between the U.S. Attorney's Office and your attorney; is that correct?

A I believe so. Yes sir.

Q But you realize that you are not going to

be prosecuted in connection with the facts and circumstances arising out of these events?

A Yes sir. That's what I believe.

Q Do you realize you don't have immunization from civil tax liabilities?

A Yes sir. I realize that.

Q And there's no -- there's no immunity for perjury?

A I have been made to understand that. Yes sir.

Q Now, in connection with any other matters that you may disclose, do you realize that those matters will not be used against you in any further proceedings?

A That's what I understood.

Q Your own testimony?

A Yes.

Q Does that also relate to your company?

A Yes sir.

Q Green Engineering Company and the employees that are cooperating with the Government in this case?

A Yes.

MR. KAPLAN: I have no further questions.

CROSS-EXAMINATION

BY MR. GILLEN:

Q The last exhibit, Mr. Green, Exhibit No. --

Green
Maywood
Copy

409 3

A 126

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

----------x

UNITED STATES OF AMERICA, :

-against- :

MARVIN D. CHRISTENFELD, :

Defendant. :

----------x

75-CR-696

United States Courthouse
Brooklyn, New York

April 21, 1976
10:00 o'clock A.M.

B e f o r e :

HONORABLE ORRIN G. JUDD, U.S.D.J.

and a jury

EMANUEL KARR
OFFICIAL COURT REPORTER
UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
FEDERAL COURT HOUSE, ROOM 362
225 CADMAN PLAZA EAST
BROOKLYN, N. Y. 11201
TEL. ULSTER 2-7105-7106-7107

Appearances:

DAVID G. TRAGER, ESQ.
United States Attorney
for the Eastern District of New York

BY: KENNETH KAPLAN, ESQ.
-and-
STANLEY MARCUS, ESQ.
Assistant U.S. Attorneys

MICHAEL GILLEN, ESQ.
Attorney for Defendant

(The following took place in the absence of the jury):

THE COURT: All right, the jury is here. Is everyone ready?

MR. GILLEN: May I just have one moment, your Honor?

MR. MARCUS: Your Honor, there is something with respect to one preliminary matter that I would like to take up.

THE COURT: Yes.

MR. MARCUS: Yesterday you raised the question as to the position of the United States Government with respect to the question about certain notes that were turned over for the examination of this Court made by Mr. Kaplan in connection with interview with Mr. Pomerantz from time to time. The Court's ruling, as I understood it at the time, that under Goldberg v. Kelly and under Title 18, United States Code, Section 3500, the United States Government was not obligated to turn those materials over because they were not --

THE COURT: I said I'd hear argument.

MR. MARCUS: That they were ratified, et cetera.

THE COURT: Yes.

MR. MARCUS: I have had an opportunity to

discuss this matter with the U.S. Attorney, Mr. Trager, and the Chief Assistant in the office, and it is the position of the United States Attorney for the Eastern District of New York if this material is not properly turned over under 3500: That under Footnote 19 of the Opinion of the Court, where the Court said; "Every witness' interview will, of course, involve conversations between the lawyer and the witness, and the lawyer will necessarily inquire of the witness to be certain that he has correctly understood what the witness has said. Such discussions of the general substance of what the witness has said do not constitute adoption or approval of the lawyer's notes within Section 3500(e)(1), which is satisfied only when the witness has quote signed or otherwise or adopted or approved what the lawyer has written. This requirement clearly is not met when the lawyer does not read back or the witness does not read what the lawyer has written.

That footnote is in the opinion of Mr. Justice Brennan, decided approvingly in concurring opinion by Mr. Justice Powell.

It is the position of the United States Government that with respect to these notes there was no indication from anything that was adduced in

evidence from Mr. Pomerantz that these were materials or notes that had been signed or otherwise adopted and approved or ratified by Mr. Pomerantz. And, therefore, under Goldberg V. Kelly and under 3500, these are materials that are not properly turned over to the defendant.

THE COURT: Well, my point was not entirely that. It was whether they were -- whether the Government wants to rely on, say, Footnote 19 if the case goes up on appeal. If it does, I presume these notes ought to be made part of the record and sealed.

MR. GILLEN: I ask that they be sealed for the Court of Appeals if --

THE COURT: I did not find any evidence of suppression or change of testimony of any sort.

MR. GILLEN: Well, your Honor, I just don't know. I know there have been nine interviews. And I ask they be sealed. My position is the same. I don't want to waste the Court's time.

THE COURT: Yes.

MR. KAPLAN: Let me say while we have the opportunity -- we are making a record here -- that there were two sets of notes. Two pages were scratch type notes. The other set -- and they were both turned over to your Honor and they were clipped together.

The other was basically a chronology that I drew myself as to subsequent times based upon my various conversations with Mr. Pomerantz. It was my own internal work product and based upon the operation of my own mind. It was not the -- not a contemporaneous recording.

THE COURT: I didn't think either of them had any dates on them.

MR. KAPLAN: No, I don't think so, either. I don't even know when they were made.

MR. GILLEN: Your Honor --

MR. KAPLAN: I was adding to them.

MR. GILLEN: My position is the same.

THE COURT: Yes.

MR. GILLEN: I ask that they be sealed, all notes taken by all Assistants. I think Mr. Marcus took notes. I don't know whether they were handed up to your Honor. I hope it never gets that far because that has to be a point in the appeal. But it will be sealed.

THE COURT: All right. Are we ready now?

MR. MARCUS: Your Honor, I think I referred to Goldberg v. Kelly. I meant to say Goldberg v. United States.

THE COURT: I know. 44 Law Week. Your note is at 4429.

THE COURT: Is Mr. Green here?

MR. MARCUS: Yes, your Honor, he is.

THE COURT: Let's bring in the jury.

You can come and sit right up here, Mr. Green.

S A M U E L G R E E N , called as a witness, having been previously duly sworn, resumed the stand and testified further as follows:

(The jury is in the jury box.)

THE COURT: Good morning, ladies and gentlemen. Thank you for your patience. If said come in at eleven I would have let the last matter drag on to 11:15.

We are ready to proceed now.

Mr. Green, I don't know whether I reminded you but you are still under oath today and you don't have to be re-sworn.

MR. GILLEN: May I proceed, your Honor?

THE COURT: Yes.

CROSS-EXAMINATION

BY MR. GILLEN:

Q Mr. Green, on direct examination you told us on a number of occasions you say you went to Democratic headquarters at Mineola Boulevard and spoke to Mr. Christenfeld, do you recall that?

A I do.

ahb 1

Green-cross/Gillen

Q But didn't you testify here in answer to Mr. Kaplan's questions that this didn't come up until the third time you met the -- the third time you met Mr. Christenfeld in connection with this and the second time you paid him -- paid him cash? Didn't you tell us that yesterday? Yesterday, right here?

A I -- I am sure it came up the second time as well as the first.

Q Did it also come up the third time then?

A I am sure every opportunity I had I must have told Mr. Christenfeld that we were having difficulty with raising this kind of cash.

Q You told us right from the beginning, gee, it was a lot of money.

A Yes, absolutely.

Q Did he tell you to go out and take a loan?

A Sir?

Q Did he tell you to go out and take a loan, Mr. Green?

A No, sir.

Q No, he didn't?

A I -- I don't think so.

Q And did he insist and say, "Hey, get the money on the table. Cash on the barrelhead. Let's make a

bargain"?

A No, sir.

Q Didn't you discuss your testimony with Mr. Kaplan before you took the witness stand? In other words, did he prepare you for the witness stand?

A Mr. Kaplan asked me a whole series of questions, sir, and I gave him answers.

Q How many times did you speak with Mr. Kaplan prior to testifying?

A Sir?

Q Prior to testifying yesterday, how many times did you speak with Mr. Kaplan?

A I don't know the exact time, but it must have been three, four or five times.

Q Did he take notes?

A He did a lot of writing. Then he would read questions to me.

Q I am sorry?

A Then he would read his questions to me.

Q All right. I --

MR. GILLEN: I make the same demand that I made on a previous occasion without reiterating --

MR. KAPLAN: I object to the demands being made in front of the jury. If he wants my questions that I

wrote out --

THE COURT: Let's go ahead.

MR. GILLEN: Can we approach the sidebar?

THE COURT: All right.

(The following took place at the side bar):

MR. GILLEN: I think, your Honor, formally I should demand on the record any and all statements reduced to writing to Mr. Green, any and all reports from whatever source involving his testimony, whether it's agents' sources -- sources of agents or any source whatsoever, or whether it's an Assistant U.S. Attorney, any and all notes of all conversations with Mr. Green.

I will say for the record that the only thing that I have had in a testimonial nature -- other than letters and things of that sort, is Mr. Green's Grand Jury testimony.

THE COURT: Yes.

MR. GILLEN: And that is it. That's October 21, 1975.

MR. KAPLAN: And the 302.

MR. GILLEN: I also have the 302, which, your Honor, was turned over to me, and which I will get into that. But I don't think I -- I will even get into that. I don't think it has anything to do with this

case.

I am looking for any reports, any notes that have to do with this case and have to do with how many interviews he had with Mr. Green. Now I am faced with a witness that doesn't know how many times he's spoken to the Government.

THE COURT: That is not surprising. But --

MR. GILLEN: I ask the Government to say how many times.

THE COURT: The fact that Mr. Kaplan asked him questions doesn't make the questions admissible. I don't think you have shown an adoption of any notes.

What kind of notes do you have?

MR. KAPLAN: Well, your Honor, first, I have my own personal notes just like the Pomerantz type notes. And then what he's talking about are the questions that I wrote out myself for my own purposes that I would use in questioning him without answers. If your Honor understands. For my own preparation, and that he knows actually where obviously I -- I was writing questions.

MR. GILLEN: If he was writing questions -- I don't know how Mr. Kaplan feels about it. I don't know how the jury feels about it. But I know I have

shown a direct contradiction between his testimony in the Grand Jury and his testimony here yesterday.

THE COURT: Well, a minor contradiction.

MR. GILLEN: I don't think it's so minor. I don't think it's so minor.

THE COURT: All right.

MR. GILLEN: I would think Mr. Kaplan in his very careful preparation would have caught such -- even if it was a minor contradiction.

I would ask that these notes at the proper time be sealed for preservation, if they are not made available for me on point one on appeal.

THE COURT: So far you haven't shown they were adopted or approved by the witness.

MR. GILLEN: I still ask that they be sealed for the Court of Appeals, if it becomes necessary.

THE COURT: All right.

(End of sidebar.)

MR. GILLEN: Judge, is this a convenient time for a break?

THE COURT: Well, we only started about an your ago. All right. If we can take a short one.

All right, the jury can go back in. Don't discuss the case.

You can step down.

(Witness excused.)

(Wherreupon, the jury retired from the court-room.)

MR. KAPLAN: Your Honor, may I ask you something just before you leave. The minute that the jury was walking out, Mr. Christenfeld's wife and child came in and embraced him right in front of the jury.

THE COURT: Well --

MR. KAPLAN: I -- I just think it's so theatrical. So if we can limit these types of activities, I would appreciate it.

Thank you, your Honor.

(Recess taken.)

THE COURT: All right, I guess we are ready. Bring in the jury. Get Mr. Green.

Mr. Kaplan, will you make sure Mr. Green is coming in.

MR. KAPLAN: He's on his way.

THE COURT: All right.

(Whereupon, the jury entered the courtroom.)

S A M U E L J . G R E E N , resumed and testified further as follows:

(Continued on Next page.)

visit him and have a cup of coffee with him.

Q Was this even after the cash payments stopped. When was the last cash payment that you say was made? When?

A I believe in '71, sir.

Q And the payments kept on through 1973; is that right?

A Payments to Peltz and Olga, yes sir.

Q Well, did Mr. Christenfeld call you after '71 and say, "Come on up and see me, Sam," or any words to that effect?

A I believe we had an exchange of letters even to that effect.

Q You mean there are letters outlining the payments of this $44,000?

A No sir. No sir. I did not say that.

Q My real question is, did Mr. Christenfeld discuss a running account of this alleged commitment with you at any time?

A No sir.

Q Thank you.

Now, yesterday you told us of a device for key employees -- I think that's the phrase you used -- key employees to generate cash. That is, the bonus, getting back of money to make contributions or donations or whatever.

BY MR. KAPLAN:

Q Well, would it refresh your recollection as to the time if I read to you your Grand Jury testimony?

Do you recall testifying before the Grand Jury on this question?

A Yes.

Q Would it refresh your recollection as to the hours if I read that question to you?

A All right.

MR. KAPLAN: On Page 9, Mr. Gillen.

MR. GILLEN: Your Honor, I would object to this --

THE COURT: Show it to the witness.

MR. GILLEN: I would object to the whole line of questions.

He is asking questions covering a period of four years, and we know from other testimony --

MR. KAPLAN: I'm going to object to any summation at this time.

THE COURT: This is argument.

I don't think we have to go that far.

MR. GILLEN: Your Honor, I would ask that he show it to her because I think the question is grossly unfair.

THE COURT: No, I don't in fact agree on that.

BY MR. KAPLAN:

Q Well, let me show you Page 9 of your Grand Jury testimony, I think that was on July 16, 1975.

I direct your attention to Line 16 through Line 19 as to generally how many hours a day Mr. Christenfeld would spend at party headquarters during the years in question.

A Shall I read it?

Q If this will refresh your recollection as to that matter.

(The witness then perused the document.)

A Well, it reiterates what I say he spent, eight hours a day at the Committee and he tried to spend a few hours a day at the County Board of Elections in Nassau County.

Q In connection with your employment as secretary to Mr. Christenfeld, did there come a time when you had a conversation with Mr. Christenfeld about a raise?

A Yes.

Q And do you recall when that took place?

A Sometime in 1970.

Q Do you recall --

A I would say the summer, around the summer of 1970.

Q Do you recall where that conversation took place?

A At the County Committee.

Q What did you say to him and what did he say to you, Mrs. Mrozack?

A I asked for an increase in salary and Mr. Christenfeld said he would see what he could do about it.

Q He said he would see what he could do about it?

A That he would try to supplement my income.

Q Did there come a time when you had a further conversation on this matter, subsequent to this initial conversation?

A No.

Q But he did say that he would see what he could do, and did he come back and discuss the matter with you again?

A Oh, yes, yes, again.

Q What did he say to you and what did you say to him?

A He said I could expect an increase in my salary within a few weeks.

Q And did he tell you how that would be taken care of?

A That I would receive a check in the mail at my home.

Q Did he tell you from whom?

A Yes, from a Green Engineering firm.

Q And did you know where the Green Engineering firm was located?

A In Squickley, Pennsylvania.

Q Did he tell you under what circumstances you would receive these checks?

A No, he just said that would be -- that was my increase.

Q By the way, had you during the course of the years met Samuel Green?

A Yes.

Q Of the Green Engineering Company?

A Yes.

Q What was your acquaintance with him?

A I don't really -- I met him once or twice.

Q In the course of your duties as secretary, you would show him into the office or what?

A I met him at the County Committee once or twice.

Q And was that just a fleeting acquaintanceship?

A On my part?

Q On your part.

A No, I directed him into Mr. Christenfeld's office, he apparently had an appointment.

Q While you were serving as secretary in the

course of your official duties?

A Yes, yes.

Q Do you recall in connection with your conversation with Mr. Christenfeld if you had seen Mr. Green at county headquarters in or about that time?

A Yes, I would say.

Q And would you say it was prior to the time that Mr. Christenfeld said that the Green Engineering would be picking up your increase in salary?

A I would, yes.

Q And how long prior?

A A month prior, perhaps.

Q Could it have been a couple of weeks?

A It could have been.

Q You have no specific recollection as to the date?

A No specific recollection.

Q Now, in connection with the statement that Mr. Christenfeld made to you that Green would be sending you checks in the mail, what was your response to him?

A I thanked him very much.

Q Did there come a time when you in fact started receiving checks?

A Yes.

Q In the mail.

Do you recall when?

A I would think the summer of 1970.

Q Well, I will show you what has been marked in evidence already as Government's Exhibit 17 and ask you if these are the checks that you received, and I ask you if that refreshes your recollection as to the general time that we are talking about.

A Yes.

Yes.

Q What was the period of time, what period of time was that?

A Well --

Q That you first started receiving checks?

A It says August 1970.

Q Is there a check on there from July 1970, on the top?

A The first one looks like August to me.

Q 7/27.

A Oh, I am sorry, I was looking at the clock here (indicating).

Right.

Q That is July of 1970?

A Right.

Q And you had occasion to receive checks in the mail; is that correct?

A Yes.

Q At your home?

A Yes.

Q By the way, when you first started receiving checks, did you have a conversation with Mr. Christenfeld subsequent to the receipt of the first check or the second check?

Did you go back to Mr. Christenfeld and tell him about that you had received, started receiving checks?

A Yes, I did.

Q What did you do?

A I called him and I thanked him.

Q What else took place in the conversation; do you recall?

A He just -- he told me -- well, as I recall --

Q Did you tell him to thank Mr. Green for you?

A Yes, yes.

Q Now did you ever -- by the way, you received checks over a period of years; is that correct?

A Three years.

Q Three years?

$50 a week, was it?

A Yes.

Q And what was the total amount of money, if you recall?

A Well, I received them bi-weekly so it was like $83 net, I would say somewhere there.

Q And there was withholding?

A Yes.

Q And in that regard you received about $6,000; would that be a fair statement?

A I would say about that.

Q Do you recall being terminated at a certain point in time?

A Yes.

Q Approximately when was that?

A In 1973.

Q Do you recall the exact month?

A The early part of the year.

Q Now, in connection with the period of time that we are talking about, approximately July of 1970, until you stopped receiving the checks in early 1973, did you ever do any work for the Green Engineering or Green Associates or Mr. Green or Mr. Zelouf?

A No, I didn't.

Q You never wrote any letters for them or used the

phone for them or did any typing for them or anything like that?

A No.

Q Was it your understanding initially that in connection with the receipt of these checks that you were not to do any work?

MR. GILLEN: Objection, conversations, not the operations of the mind.

THE COURT: Ask about conversations.

Q Well, in conversations with Mr. Christenfeld, what was your understanding as to whether --

THE COURT: No, conversations, what was said with respect to doing any work.

Q Were you ever asked to do any work by anybody?

A No.

Q By the way, Mr. Christenfeld and you worked closely, would you say, in connection with the performance of your duties?

A Yes.

Q On a daily basis he knew what you were doing during the course of the day?

A Yes.

Q And by the way, did you have occasion to fill out a W-2 form in connection with this employment?

I show you what has been marked as Government's Exhibit 18 and ask you if this W-2 form is what you -- actually it is a W-4 form, withholding exemption certificate that you filled out in connection with this employment.

A Yes, that is right.

Q Did Mr. Christenfeld and Mr. Green and Mr. Zelouf or anybody associated with Green Engineering or Green Associates, those firms, ever ask you to do any work?

A No, sir.

Q And you never did any work?

A No, sir.

Q In connection with the conversation that you had with Mr. Christenfeld after you thanked him or told him to thank Mr. Green, do you recall saying anything else in addition?

A No.

Q To Mr. Christenfeld?

A No.

Q Does it refresh your recollection if I mention something to you?

A Yes.

Q Did you say anything about, If they were in a bind?

A Oh, yes, I am sorry, right.

Q What did you say about that?

A I'm sorry, I did thank Mr. CHristenfeld for the increase in salary and I did s ay that if in fact they ever were in a bind where they needed any typing or anything, I would be able to do so.

Q And what did Mr. Christenfeld say?

A Thank you.

Q Nobody ever asked you to do anything, though, did they?

A No.

MR. KAPLAN: Just one minute.

I have no further questions.

(Continued next page.)

8 MR. ZEVIN: (continuing) -- that he got the word about 1:25. He started down here. What more can I say?

THE COURT: Amazing.

MR. ZEVIN: Yes, your Honor.

THE COURT: All right.

THE CLERK: The jurors are all here.

THE COURT: All right, bring them in.

(Whereupon, the jury enters the court room)

THE COURT: All right, we are ready to start again.

Mr. Kaplan?

MR. KAPLAN: The Government calls Harry Pelz, Jr.

THE COURT: Come forward, please.

Bring on your witness.

H A R R Y J . P E L Z , having been duly sworn by the Clerk of the Court, took the stand and testified as follows:

THE CLERK: You may be seated.

DIRECT EXAMINATION BY

MR. KAPLAN:

Q Mr. Pelz, where do you presently reside?

A 242 North Road, Oyster Bay, New York.

Q What is your occupation, sir?

A I am an attorney.

Q When were you admitted to practice law?

A 1963.

Q In connection -- the question was -- I'll ask it again if you don't understand it. I hope that you'll answer me -- whether you did legal -- performed any legal services in behalf of Green Engineering or Green Associates?

A I was available under the terms of the retainer agreement to do whatever work that they sent to me.

Q Did they send you any work?

A Not to my knowledge.

Q Did you perform any work?

A That was sent to me? It wasn't sent to me.

Q Did you perform any work --

THE COURt; He has answered it.

MR. KAPLAN: Excuse me, your Honor?

THE COURT: It is covered.

Q By the way, did you know if this was a public corporation or a privately held corporation?

A No, I did not.

Q Did you know if it was on the New York Stock Exchange or on the American Stock Exchange?

A No.

Q Do you know if they perform municipal services primarily or private services?

A I do not know.

Q Did you know who the principal stockholders

were?

A No, I did not.

Q Did you know any of the employees?

A No.

Q Did you know if it had any pension plans or profit-sharing?

A No.

MR. GILLEN: Your Honor, I'll object. I think the questions he's been asked and answered, unless he wants to go through the whole --

THE COURT: He hasn't taken that long.

Q Did you know about relocation of personnel from Pittsburgh to New York?

A No.

Q Do you know anything about fees generated from contracts in New York?

A No.

Q Did you know if they were required to file by-law and annual statement with the SEC, Securities and Exchange Commission?

A No.

Q Did you take part in any litigation as a plaintiff or a defendant in conncection with any court matter or administrative matter?

A No, I did not.

THE COURT: You have really covered that already.

MR. KAPLAN: I intend to go through a few more, your Honor.

MR. GILLEN: I will object.

THE COURT: Not too many. Go ahead.

Q Did you review or aid in, assist in the preparation of any documents, tax returns, corporate papers in connection with the business of either Green Engineering or Green Associates?

A I prepared certain reports for accountants, in response to the accountants' letters.

Q In fact, you had occasion to deliver to the grand jury a file that you kept in connection with your business with Green Engineering Company; is that correct?

A Part of a file.

Q Well, the file that you had in your possession?

A That's correct.

MR. KAPLAN: Any objection to being offered in evidence?

Mr. gillen: I have no objection.

MR. KAPLAN: I'll offer the file in evidence.

MR. GILLEN: Exhibit No. please?

THE CLERK: That will be Government's Exhibit 22 in evidence.

(So marked.)

Q Now I showyou what's been marked as Government's Exhibit 22 in evidence and ask you if this is the file which you delivered to the grand dury in connection with this case?

A It -- yes, it appears to be either materials that I delivered to you.

Q What does it purport to represent?

A It's papers involving correspondence between myself and Green Engineering Company.

Q Was this the file that you kept and maintained in the regular course of business in connection with your relationship specifically with Green Engineering Company?

A This is -- yes, this is part of the file, or one of the files.

Q Well, does this purport to be a file which is complete as to a certsin period of time?

A It appears to be complete from March, 1970, to June, 1972. Or June 1, 1972.

Q So for that period of time, at least it's complete?

A Everything that exists for that period of

A 156

time that I have I believe is in this file.

Q In connection with the period subsequent to June of 1972, where are those documents?

A I do not have them.

Q Where are they?

A I believe they've been thrown away.

Q By yourself?

A Yes.

Q This was your so-called legal file in connection with the Green Engineering Company; is that correct?

A This was a file that I kept of the correspondence with GreenEngineering Company.

Q This was the file -- was there any other file other than the one that you threw away and this one?

A I don't believe so.

Not all of the items I received may have been in both of those files, sir.

Q Well, first of all, is it indicated in connection with transmittal letters and correspondence, for example, retention of yourself by Green Engineering? Is that indicated in that file?

A There is a copy of -- yes, there is -- the original of that letter is here and transmittal letters are here.

Q Transmittal letters meaning letters that are sent in connection with checks?

A Yes.

Q In addition to the transmittal letters and the other letters, such as the retantion letter, are there any other documents in the file?

A I believe that there are letters concerning the accounting firm's request for certain information.

Q Well, can you please remove from the file any such letters?

A The accounting -- anything relating to the accounting firm?

Q Anything relating to the accounting matter.

A Looking through here quickly, I find these here (indicating). I know there were more than this, but they're not in the file now or were in the other file.

Q In other words, they relate to the same general --

MR. GILLEN: Objection, your Honor, no "in other words."

THE COURT: Overruled.

Q The one that you removed from the file, the series of letters, wouldit be fair to say that this relates to -- Mr. Pelz?

Q Transmittal letters meaning letters that are sent in connection with checks?

A Yes.

Q In addition to the transmittal letters and the other letters, such as the retention letter, are there any other documents in the file?

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Q Well, can you please remove from the file any such letters?

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Q Anything relating to the accounting matter.

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MR. GILLEN: Objection, your Honor, no "in other words."

THE COURT: Overruled.

Q The one that you removed from the file, the series of letters, wouldit be fair to say that this relates to -- Mr. Pelz?

A I'm listening.

Q -- requests by Lybrand Ross?

A No. The only thing --

Q May I finish the question, please?

Requests by Lybrand Ross to the Green Engineering Company as to their contingent liabilities and other matters relating to an audit and a letter which was forwarded to you by Stuart Friedman relating to the audit by Lybrand Ross? Would that be a fair statement?

A Could I have the question again?

Q I'll rephrase the question, if you don't understand.

Is there a letter from Stuart Friedman which indicates to you in some way that Lybrand Ross, which is an accounting firm, isdoing an audit of the Green Engineering Company?

A Yes.

Q And that letter basically relates to requests as to information concerning present litigation and contingent liabilities and matters that would be of a concern to an audit; is that correct? As it appears to you?

A Yes.

Q And in the course of your legal career, have you had occasion to receive letters with that basic form, requesting contingent liabilities and other matters,

pertaining to litigation, present litigation and the assets of a corporation, as far as you understand it?

Do you understand the question?

A I believe so.

The answer is, yes.

Q These are basically standard requests, form requests?

A They are periodically requested from -- in different situations.

Q And you make a response in that regard; is that correct?

A That's correct.

Q You say that there are no contingent liabilities, you know of no litigation?

A In the response made in April of 1971, yes.

Q Now, other than that letter and your response in the file, are there any other letters other than transmittal letters and retentionletters?

A Again, there seem to be some letters that must be missing; but in quickly looking through here, the only other letters are the transmittal letters and the rentention letter, aside from the one I have pulled out.

Q Do you recall if you previously testified that this file constitutes your sum total of your experience with

Green Engineering for that period of time?

MR. GILLEN: He just testified to that a few moments ago, your Honor, for the period of time.

MR. KAPLAN: He said there seems to be something missing, your Honor. If he testified to something else?

THE COURT: Overruled.

A (Continuing) I said that this was all the letters that I have in existence from that period of time. I recall that this similar request was made, I believe in -- at least three years, and I believe more than one reply was given to Lybrand Ross and that I received letters directly from Lybrand Ross; but these do not appear in the file.

Q They might have been in the other file, in other words?

A They might have been in the other file or I may have failed to have them filed in the file. It may have been misplaced.

THE COURT: Is there anything else that is missing in the file?

THE WITNESS: Not to my knowledge.

THE COURT: Anything more, Mr. Kaplan?

MR. KAPLAN: A couple of more questions, your Honor.

BY MR. KAPLAN:

Q At the time that you were receiving the $5,000 from Green Engineering, the first year, 1970 --

THE COURT: I do not know what the $5,000 is.

MR. KAPLAN: $5,000 for the year 1970.

THE COURT: For 10 months. All right.

Q $6,000 for each subsequent year; isn't that correct? The first year was $5,000?

A That's correct.

Q For that first year, how much money did you make?

A I don;t understand.

Q What was your income from the practice of law in the year 1970?

A I believe about $15,000. That was my net. My gross income. Not --

Q In connection with the entering into your partnership agreement with Mr. Christenfeld, was one of the factors the fact that you were receiving this so-called stipend as a cushion, as far as --

A I had no discussions with Mr. Christenfeld concerning that.

Q Was it your understanding, though, in entering into this --

MR. GILLEN: I object to hisunderstanding.

THE COURT: Sustained.

Q Have any promises been made in connection with your testimony here today?

A From whom?

Q Well, has a letter been sent to you?

A The U.S.Attorney's office has indicated that they will not prosecute me for anything arising from this investigation, except for perjury, civil tax liability.

MR. KAPLAN: No further questions.

(Continued next page.)

CROSS EXAMINATION BY

MR. GILLEN:

Q Mr. Peltz, you said you were under the impression you received the $18,400; is that correct?

A That's correct.

Q Could it be $17,400?

MR. KAPLAN: Objection as to what it could have been.

THE COURT: Overruled.

MR. GILLEN: That's the evidence, Your Honor.

MR. KAPLAN:He said it was $18,000.00.

MR. GILLIN: I know.

THE WITNESS: I received $500.00 a month commencing in February of 1970 and I thought terminating in March of 1973, but apparently from the letter in there it may have been February,'73. The exception of one month when I received $400.00 instead of $500.00, my calculations that would be three years at $500.00 each month, which is $18,000.00, plus $400.00, $18,400.00.

Q If the actually evidence in the case showed that you received $17,400.00, will you accept that figure?

MR. KAPLAN: I object to that. That's not the evidence in the case.

THE COURT: Overruled. Somebody can add up the

checks.

MR. GILLEN: That's right.

MR. KAPLAN: Can we have that added up?

MR. GILLEN: You have it in the indictment.

THE COURT: Do not talk with each other.

MR. GILLEN: I'm sorry.

THE COURT: You asked the question and I overruled the objection. Now go ahead.

Q You do accept that figure; is that correct?

A My best recollection is that I had got checks from February, 1970, to February or March of 1973, each month, inclusive, and by my calculations, that comes to $18,400.00.

If i'm in error, it's because my addition is bad.

THE COURT: Let the document speak for it when the time comes.

MR. GILLEN: All right. Fine, Your Honor.

Q As to error, Mr. Kaplan did show you, you were in error as to the March and the February; is that right? The termination date?

A Apparently.

Q All right.

A Apparently.

Q Incidentally, when these checks stopped coming in, we'll say in -- let's accept February, the day of the letter

in exhibit 14, did you discuss that with Mr. Christenfeld?

A Yes, I told Mr. Christenfeld that the green retainer had stopped.

Q What did he say?

A He said, "I'm surprised it went on for so long."

Q Where was this conversation?

A My best recollection is that it was probably in -- at 240 Mineola Boulevard, Mineola, New York.

Q And during the period of time that you were receiving these checks, the $500.00 per month, did you discuss the receipt of these checks with Mr. Christenfeld?

A No.

Q Did he ever ask you whether you were getting the money?

A He -- no, he never asked me if I was getting the money.

Q Did you ever give him any of that money?

A No, I did not.

Q What happened to that money?

A Put into my personal checking account, personal savings account, used for my personal living expenses.

Q Did that money form any part of the partnership assets of Christenfeld, Schober and Peltz?

A No.

Q Did it form any part of the partnership assets of the other firms you mentioned? I think you went down three or four of them?

A No, didnot.

Q You kept that money yourself; is that correct?

A That's correct.

Q Okay. Now, how old a man was Mr. Schober?Approximately?

A I think about -- at the commencement, in 1970, I believe about 65.

Q And how long had he been in the practice, do you know?

A Before I went with them, I knew he had been in Queens as a head of the D.A.'s Bureau for 20 years, and I think he'd been in practice 20 years out in Nassau. He probably was in practice about 40 years.

Q So he had some experience; is that right?

A Yes, sir.

Q I see.

I think you did testify that if you got in a jam on anything, you'd go to Mr. Schober and say what do I do?

A Did frequently.

Q On things that were maybe not within your peculiar experience? Is that correct?

A That's correct.

Q How old a man was Mr. Christenfeld back then?

A Well, I assume about 50.

Q Okay. Now --

A In 1970, I'm talking about.

Q Okay, that's correct.

Now, did Mr. Schober have a practice of his own?

A Yes sir.

Q Was thatoutside of this partnership between you, he and Mr. Christenfeld?

A Yes, it was.

Q Do you know what monies he earned from that outside practice?

A I have no idea.

Q Did you have an outside practice other than the assets of the, or the partnership practice?

A Yes, I did.

Q Did you have a practice in addition to the monies you were receiving from Green?

A Yes, I did.

Q So that the jury understands it, was this an agreement that whatever mutual benefits or whatever mutual business each could bring into this partnership, each would retain what other -- other aspects of practice that they had?

A My best recollection is certain things would be thrown into the pot and certain things weren't going to be thrown in.

Q Were not; is that correct?

A That's correct.

Q And the amounts that were thrown -- when we say "the pot" we are talking about the partnership bank account?

A That's correct.

Q Okay. And as -- when things were thrown into the pot, was there ever one penny of that money from Green put into that pot?

A No sir.

Q Now, then there was an agreement, I think you told us, that after expenses in the first year of that partnership, you were to get $10,000; is that correct? The first $10,000.00?

A That's my recollection, yes.

Q Was that the money from the pot?

A The $10,000.00 was to come from the partnership funds, yes.

Q Okay. Did the Green money have anything to do with that?

A No, it did not.

Q All right. How much did youmake from that partner-

AL 170 598

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

----------x

UNITED STATES OF AMERICA, :

-against- : 75-CR-696

MARVIN D. CHRISTENFELD, :

Defendant. :

----------x

United States Courthouse
Brooklyn, New York

April 22, 1976
10:00 o'clock A.M.

B e f o r e :

HONORABLE ORRIN G. JUDD, U.S.D.J., and a jury

EMANUEL KARR
OFFICIAL COURT REPORTER

Appearances:

DAVID G. TRAGER, ESQ.
United States Attorney
for the Eastern District of New York

BY: KENNETH KAPLAN, ESQ.
-and-
STANLEY MARCUS, ESQ.
Assistant U.S. Attorneys

MICHAEL GILLEN, ESQ.
Attorney for Defendant

(The following occurred in the absence of the jury.)

THE COURT: Be seated.

MR. MARCUS: Your Honor, I have a few preliminary matters to take up:

At the end of the day yesterday you asked the United States Attorney to turn over to you certain notes in connection with interviews of Mr. Samuel J. Green.

I do have these notes here (indicating).

I feel, however, compelled to say at this point that once again under 3500 and under Goldberg vs. The United States, it is the position of the United States Attorney that we are not obligated to turn these materials over to the defendant, that no showing has been made whatsoever that this is a statement, as that term is defined within the statute, that indeed the very result of the practice of this kind is to make attorneys in these matters witnesses in the case, and one gets the distinct impression that that is in fact just what Mr. Gillen is attempting to do.

Nevertheless, if the Court wishes to review these notes or see them in camera, I do have them for the review of the Court.

I think the problem with attorneys becoming witnesses was discussed by the Supreme Court in the Goldberg case and they concluded that it was undesirable. I would also point out that in the concurring opinion of --

THE COURT: My primary purpose, since I ruled that I thought Mr. Gillen had not shown that they were accepted or approved by the witnesses was for you to have them available for the Court of Appeals on review, if there is a review.

MR. GILLEN: I can't even show them to the witnesses, your Honor, so how can I have them approve it.

You know, this is like Chief Justice Marshall who said, How can I describe a paper that I have never even seen.

In any event, I see no harm in marking them for the Court of Appeals.

THE COURT: Let it be marked.

THE CLERK: Court's Exhibit Number 4.

(So marked.)

THE COURT: All right.

Anything else?

MR. KAPLAN: I have another document to mark and turn over to Mr. Gillen, it is just a document to

refresh a witness' recollection, it has to do with the books --

THE COURT: It has been used.

MR. KAPLAN: It may be used, it is just a notation, it has to do with the books and records that Mr. Gillen has seen.

THE CLERK: Is that 3500?

MR. KAPLAN: Yes.

Your Honor, at this time I would like to make a statement for the record.

THE COURT: Yes.

MR. KAPLAN: Mr. Gillen, time and time again, has suggested in front of the jury that the Government has in some way told witnesses or threatened witnesses or told them not to talk to the defense.

Let me say that no Government attorney associated with this case has ever told any witness not to talk to the defense. We have advised the witnesses that they have the absolute right to talk to Mr. Gillen or not to talk to Mr. Gillen, it is a decision that they must make.

In addition, everyone --

THE COURT: I thought you might have brought something out on redirect on that because --

MR. KAPLAN: In any event, your Honor, all of these witnesses have been represented by counsel, and, you know, attorneys that are experienced; these aren't just -- well, every time we met with these people they had attorneys present -- and I am just saying this for the record and to advise the Court that I think that it is an egregious misconduct on Mr. Gillen's part to keep suggesting things which he knows cannot be true.

He has spoken to all of these witnesses --

MR. GILLEN: No, I haven't.

MR. KAPLAN: He has spoken to Pelz, he has spoken to Olga, he knows that they --

THE COURT: He didn't speak to Pomerantz.

MR. KAPLAN: That is true, but an attorney --

MR. GILLEN: And I didn't speak to Noonan except for just a week before, although I met the man.

Your Honor, quite frankly, I am asking questions which I have a right to ask, and I have got two affirmative answers so far --

MR. KAPLAN: He doesn't have two affirmative answers, he has one affirmative answer, and let me say, your Honor --

THE COURT: The way to do it, the way to do it is by redirect and not by forbidding the questions.

MR. KAPLAN: One other matter, your Honor:

Mr. Friedman is the next witness and there is just one question that I think if Mr. Gillen would ask would be improper, and I would just bring that to the Court's attention to ask for a prior ruling, and that relates to Mr. Zelouf's testimony and the results of the so-called Roncallo case, and I would ask that no question be asked that would in any way reflect to the jury what the result was, that would be highly prejudicial.

MR. GILLEN: I don't think I would, I know the bounds of propriety, your Honor.

THE COURT: All right.

MR. GILLEN: I had intended to question him on Mr. Zelouf because he was mentioned in that testimony as giving Mr. Zelouf money, and strangely enough some of the money, while he got $3,000 from Mr. Friedman, he only allegedly paid $1,250, a little short stopping, perhaps. That is the type of thing, but I'm not going to ask about the results of Roncallo, I don't think it would be proper for me to ask.

THE COURT: Zelouf isn't on trial.

MR. GILLEN: No, sir, but Mr. Zelouf is the nephew-in-law of Mr. Friedman who is a co-conspirator and I think Zelouf is a co-conspirator.

These are the type of things -- if he can get hearsay, why can't I?

MR. MARCUS: I think the point here is that this is a collateral matter, the issue here is the allegations of extortion and conspiracy to defraud involving Marvin Christenfeld, not the case of Angelo Roncallo or Zelouf's involvement with Roncallo.

Obviously Mr. Gillen may ask certain questions in connection with it but the Roncallo case is a collateral matter.

THE COURT: Let us see what the questions are going to be.

MR. GILLEN: Really, the only point that--

THE COURT: The point Mr. Kaplan makes is that a different jury decided on a different case and it is not relevant and should not be brought out here.

MR. GILLEN: Did I ask that question?

THE COURT: You did not.

MR. GILLEN: I did not.

THE COURT: Don't get too close to it.

MR. GILLEN: I won't.

All I can say is that it is very strange, these fellows run all over the country getting extorted, it is like being a little bit pregnant, it is just improbable, your Honor.

Your Honor, just out of an abundance of caution, there was a demand made upon me for a document, and from this document I just will use it to get a date.

Can we mark that, please, for identification.

THE COURT: All right.

MR. GILLEN: I will show it to my brothers at the bar.

THE CLERK: Defendant's Exhibit C for identification.

(So marked.)

(Document was then handed to Mr. Marcus.)

THE COURT: All right.

Let us bring the jury in and begin.

Incidentally, we are going to have a long lunch this noon because I have a long 2:00 o'clock calendar.

(The jury then took its place in the jury box.)

(Continued next page.)

THE COURT: Good morning, ladies and gentlemen.

MEMBERS OF THE JURY: Good morning, judge.

THE COURT: We are ready to start. Is your witness here, Mr. Kaplan?

MR. KAPLAN: Excuse me.

THE COURT: Call your witness, please.

MR. KAPLAN: The Government calls Stuart Friedman?

THE COURT: Is that Freedman?

THE WITNESS: Friedman.

S T U A R T F R I E D M A N, called as a witness on behalf of the Government, having been duly sworn by the Clerk of the Court, testified as follows:

DIRECT EXAMINATION BY

MR. KAPLAN:

Q Mr. Friedman, where do you presently reside?

A Pittsburgh, Pennsylvania.

Q How old are you?

A I am 39.

Q What is your present employment?

A I work for the Keystone Resources Corporation.

Q In what capacity?

A Vice President and Controller, Financial controller.

Q Please keep your voice up.

A Financial controller.

Q What is the nature of the business of Keystone Resources?

A We are in the metal business, metal brokers, manufacturers.

Q Can you give us some general idea of your background?

A I am a Washington and Jefferson college graduate with a Bachelor of Arts and a master's degree from the University of Pennsylvania, the Wharton Graduate School of Business.

Q Prior to your connection with the Keystone Resources, did you have occasion to be employed in another capacity.

A Yes, sir.

Q With what firm was that?

A I was employed by the Green Engineering Company.

Q For how long a period of time?

A From October 1965 to February 1973.

Q In what capacity were you employed at Green Engineering?

A I was the Controller.

Q In your position as Controller, what durite did you perform?

A I was responsible for the overall financial stability, the integrity of the assets and as controller of the firm the profitibility of the business, well, the general function of an average controller.

Q Did you prepare or cause to be filed tax returns?

A Yes, I did prepare them.

Q Now, Mr. Friedman, did there come a time when Green Engineering opened up a New York office?

A Yes, sir.

Q Do you recall what year it was?

A I think that was in 1968, approximately.

Q What was the name of the New York office?

A Samuel J. Green Associates.

Q Can you give us a general idea about the relation between the New York office in Hicksville and the Pittsburgh office of Green Engineering Company?

A Samuel J. Green Associates was a division of Green Engineering Company and staffed by our personnel and it opened up on Long Island.

Q Did personnel travel interstate between Pittsburgh and Hicksville in connection with the business operations of the two offices?

A Yes, constantly.

Q And were materials and supplies shipped between

Pittsburgh and New York and taken between Pittsburgh and New York in connection with the performance of the duties of the two offices?

A Yes, sir.

Q Were telephones and mails used in connection with the performance of the two offices?

A Yes.

Q In connection with the funds that were received by the Hicksville office, would the flow of those funds be from the Hicksville office to the Pittsburgh office?

A They would all be channelled back in the Pittsburgh office, which controlled the funds and disbursements.

Q How about the bank accounts?

A The bank accounts were kept in Pittsburgh and controlled by our controllers office.

Q What were the nature of the operations of the Hicksville office?

A They were the same kind of business as Green Engineering, that is, design engineers for sewage contracts, that type of work.

Q How many employees did the Hicksville office have when it opened up in 1968 and a few months into 1968?

A Well, they started out with very few, three, four, five.

Q And they expanded?

A Yes.

Q They expanded at some point in time?

A Yes.

Q And was that in connection with certain contracts?

A Yes.

Q Do you recall what contracts that was?

A The first contract that opened the office was the Massapequa contract.

Q MAssapequa?

A Massapequa contract.

Q Was it also known as Massapequa Sewage District Contract?

A I believe so, I'm not too familiar, I believe so.

Q As a result of the award of this first contract, what were the requirements in terms of expansion of staff?

A We had to expand our staff up to a certain number of people, I don't know exactly, probably around 10, 20, to perform the services of design required for that job.

(continued next page)

Q Were these people to be retained by Green Engineering?

A Yes.

Q In connection with future work?

A Hopefully. The purpose of the staffing was for future expectation --

MR. GILLEN: Objection to "hopefully" and to "future expectation."

THE COURT: Well, it is not only pedants that dislike the word, but I will permit its use.

A The intention was to retain the personnel for future work.

Q Who was in charge of the Hicksville office?

A Victor Zelouf.

Q Do you know where Victor Zelouf is at the present time?

A No.

Q Did there come a time in 1969 when you learned about a certain work flow situation in the Hicksville office?

A Yes.

Q From whom did you learn that?

A Mr. Green, Mr. Zelouf.

Q And what was that situation?

A Well, that the work had deteriorated badly in

the Hicksville office and that we needed some further work, it was imparative that we seek new work, we had actual need to attempt to find work to keep our force occupied and to keep the expansion and the viability of the beachhead that we had established in New York, on Long Island.

Q Was there an attempt to obtain further work?

A Yes, we continuously attempted to obtain work and tried to get new work.

Q What were the results of those attempts?

A They met with failure.

Q I direct your attention to the fall of 1969.

Do you recall a specific event concerning Samuel J. Green, president of Green Engineering Company?

A Yes.

Q What was that,

A Well, he went to Long Island, to Samuel J. Green Associates, in the area, to discuss the obtaining of work, the future obtaining of work.

Q Did you happen to know it before anybody on Long Island?

A At that time I understand he met a Mr. Christenfeld.

MR. GILLEN: Your Honor, I will object to any hearsay conversation being testified to by

Mr. Friedman. That iswithout a proper charge to the jury.

THE COURT: Well, I think he is obviously testifying about something he knows only from being told, and I suggest you stick to what he actually did with respect to any activities as they related to Mr. Green.

MR. KAPLAN: May we approach side bar, your Honorp

THE COURT: All right.

(The following occurred at side bar without the hearing of the jury.)

MR. KAPLAN: Let me just say, your Honor, that Mr. Friedman is an officer or was an officer of the corporation; he was the person who took a part in all the activities in connection with the payments to Mr. Christenfeld, and he was an officer of thecorporation which is charged in the indictment.

THE COURT: He should testify to things that he knew.

MR. KAPLAN: He can testify as to conversations as well as the state of mind, he was a victim of an extortion and that is in connection with the conspiracy just the same as Samuel Green and Zelouf,

and these contributions which were made were involved in this conspiracy.

THE COURT: No.

Is there a conspiracy charge here?

MR. KAPLAN: Well --

MR. GILLEN: No.

MR. KAPLAN: Hold it, Mr. Gillen.

The first initial meeting relates to the extortion; the second relates to activities concerned with Olga Mrozack, and Pelz, that is in connection with placing them on the payroll for purposes of getting a tax deduction and the conspiracy to defraud, Judge, relates to that.

There is a conspiracy charge. He performed certain activities and participated in the tax fraud to generate the cash payments.

We have prepared a memorandum of law in this area, your Honor, and we feel that under two theories of law his testimony would be admissible.

THE COURT: You do have conspiracy on the income tax problem.

MR. GILLEN: Not on counts one or two.

MR. KAPLAN: He isan officer of thecorporation, your Honor, and his testimony will be, and it will

come out --

THE COURT: There is no rule that an officer of a corporation can testify to hearsay.

MR. MARCUS: Your Honor, I think it is clear as to Rule 803 of the New Federal Rules that the state of mind of the victim of an extortionate plot, and in this case the charge here involves the corporation, its officers and its agents, they would come in even though it is hearsay, I would suggest to the Court.

Now may I also hand up a memorandum of law which has been prepared and in which there are ample federal cases to support the theory that conversations between victims of an extortion are admissible for the purpose of showing the state of mind, not for the purpose of showing the truth of the propositions asserted.

Mr. Gillen, here is a copy of the memorandum.

(Mr. Marcus then handed a copy to the Court and to Mr. Gillen.)

MR. GILLEN: Thank you.

MR. MARCUS: Your Honor, I address myself first to the series of cases cited on page four of the memorandum of law, in which it seems quite clear

that other federal courts have adopted the principle that the testimony of a victim in an extortionate plot regarding his state of mind is admissible for purposes of demonstrating that state of mind, although it is not admissible for the purpose of proving the truth of the matter.

Your Honor, there is this citation, Bianchi v. United States, 219 F. 2d 182, 192 (8th Cir. 1955) case.

Furthermore, United States v. DeCarlo, 458 F. 2d 358 (3d Cir. 1972); and United States v. Nahaladshi, 481 F. 2d 289 (5th Cir. 1973) case.

Now I would suggest to the Court that if Mr. Kaplan would explore the questions with Mr. Friedman a little bit more, he would establish the state of mind of the man, what the state of mind was and that he was a victim of an extortionate plot, and it is principally for this purpose, your Honor.

Your Honor, I would further add, however, that after March 7, 1970 is concerned, which is the date cited as to the conspiracy in the charge, any statements in connection with that would be admissible for the truth as to the defendant aslong

as the conspiracy was established and acts were made in furtherance of the conspiracy.

MR. GILLEN: Do you have any objection to having this man charged as a co-conspirator? That is, do you have any objection to the jury knowing that?

THE COURT: They are certainly entitled to that.

MR. KAPLAN: You can bring it out.

MR. MARCUS: You will have an opportunity.

MR. GILLEN: I want a charge from theCourt, with all due respect, that this man is charged with being a co-conspirator.

THE COURT: Give me that again?

MR. GILLEN: I'm asking for a cautionary instruction that this man is charged as a co-conspirator.

THE COURT: I am not going to give the whole charge in evaluating the evidence at this point.

MR. GILLEN: It is not just an evaluation of the evidence; this is hearsay testimony, it is admissible under the conspiracy exception, and this man is a co-conspirator, according to the Government.

MR. MARCUS: May I inform the Court that

that was made known to Mr. Gillen, that is with respect to conversations prior to March of 1970, and the only point we are exploring is the conversation in the fall of 1969.

MR. GILLEN: I will object to all of the conversations.

THE COURT: I will overrule your objections asto that.

MR. GILLEN: But I will abide by your Honor's ruling.

(Continued on next page.)

1 (Whereupon the trial resumed in the presence of the jury.)

THE COURT: Ladies and gentlemen:

One of the things the Government has to prove on the extortion counts in this case is that governed by the definition of extortion, which means obtaining property by wrongful use of actual or threatened force, violence or fear, or under color of official right, and fear of economic loss is one of the forms of fear, and to that extent I will let Mr. Friedman with respect to the state of mind that the Government is trying to show was induced in Mr. Green by his conversations with Mr. Christenfeld.

You can go ahead.

BY MR. KAPLAN:

Q I believe, Mr. Friedman, that the last question I asked you concerned and event that took place some time in the fall of 1969 concerning Mr. Green's meeting with a certain individual in Long Island; do you recall that?

A Yes, he met Mr. Christenfeld and returned to Pittsburgh and discussed again the lack of work and the economic duress that the office was under, and our failure in an attempt to get work, and that the only way we were to be able to obtain work was us to meet a commitment, a payment to obtain work to get a job.

Q Did Mr. Green tell you how it came about that the commitment was made?

A In connection with his meeting with Mr. Christenfeld, yes, the commitment was put forth by Mr. Christenfeld, as I understood it, from him and that it was a definite commitment we would have to pya if we wanted to get the work.

Q Were you advised in any way as to what Mr. Christenfeld told Mr. Green, in short?

A Yes.

Q What did he tell him?

A He told him we would have to make a commitment of approximately so many dollars, $40,00 to $45,000 to get the job.

Q And if the commitment was not made?

A We wouldn't get the work.

Q Did you get any other work in Nassau County?

A There was no other work to be had, we had been trying, there was no other work to be had, there was no other way to get work, that was the state of the art and the state of the industry.

Q In connection with your position as controller and an officer of the corporation, what was your state of mind in connection with this particular conversation?

A I was extremely alarmed for the economic viability

of our own company and from the problems that it engendered and from the obvious implications that were imposed upon us, the severe economic hardship that would be a severe problem for us, it was very disheartening.

Q And what was the consequence of not making this payment, as you understood it?

MR. GILLEN: I object.

THE COURT: Sustained.

I think there are sufficient inferences that can be drawn from what is already in the evidence.

Q In connection with your conversation with Mr. Green at that point in time, what did you observe concerning his demeanor?

A He was upset, he was under pressure, under heavy pressure because it involved a policy whether to keep going in Nassau County with our staff, our people, or close the office; it involved whether or not we could keep the office open any more.

Q Did he indicate to you that he had made the commitment to Mr. Christenfeld in some sense?

A Yes.

Q Now, had you taken a part as -- withdrawn.

In connection with your employment as controller, had you taken a part in generating payments to public officials

prior to this time?

A Yes.

Q Would you please explain that answer?

A Well, during the course -- As I said, it was a part of the industry practice that various contributions were made to political campaigns, at the time of primaries, at the time of election times and at certain times because of the situation as I just explained it and there were specific commitments that were made and had to be made to obtain the work; there was no other way to get the work, especially in state or governmental type work as --

Q From whom?

A Well, any type of public works.

Q From whom did these commitments come?

A The problem came -- They came from people handing out work, they were public officials representing the state or the local agencies handing out the job.

Q In connection with payment to public officials prior to the Christenfeld commitment, were there ever amounts as large as you just mentioned, $40,000, $45,000?

A No, they absolutely were not.

Q Now, in connection with payments, were some of the payments that you made legitimate political contributions to politicians?

THE COURT: Wait a minute.

There is a law against corporations making political contributions, so when you talk about legitimate --

MR. KAPLAN: We are not talking about corporation corporations.

A In many cases Mr. Green personally wrote checks and gave political contributions out of his own account, that I know of.

Q Did Mr. Zelous or other people associated with the partnership also make contributions out of there own personal accounts?

A Yes, sir, as far as I know.

Q And out of the proceeds of the partnership?

A Mr. Zelous wrote personal checks out of his own account, I believe in many cases.

Q Now, in connection with the particular commitment that we are talking about, the Christenfeld commitment, did there come a time when you performed any activities in connection with the cash to be made to pay this commitment?

A Yes, I would as a part of my involvement in this whole process help generate cash through various means and funnel it to Mr. Green, and on one particular case to Mr. Zelous who came in to pick up cash and took it back to Long Island to give to Christenfeld.

(continued next page)

Q What was the procedure that was employed in connection with the generation of cash?

A The primary procedure to generate cash was to develop a bonus system among approximately five or ten trusted key employees, and this bonus system was a system in which approximately one-third of a bonus would be actually in fact kept by the employee, approximately one-third withheld from his salary and paid to the Government to relieve him of federal taxation, and a third would be given back to the so-called corporate fund to provide for future work to engender business and keep it going.

Q Where did this money go?

A This money eventually went to Mr. Green.

Q Did you keep some of the money at some point in time?

A Occasionally, a little bit if Mr. Green was out of town, I kept a little bit of it at the time. I kept it, yes.

MR. KAPLAN: I ask that these documents be marked for identification.

MR. GILLEN: Your Honor, perhaps we can get this into evidence.

What are they?

If I have no objection to them it can go into evidence.

I have no objection.

MR. KAPLAN: I will offer them into evidence, your Honor.

THE COURT: Mark them.

MR. GILLEN: That goes to any other document, if we can agree on them.

THE COURT: Thank you.

THE CLERK: Set of documents marked as Government's Exhibit 23 in evidence.

(So marked.)

BY MR. KAPLAN:

Q Mr. Friedman, I show you what has been marked as Government's Exhibit 23 in evidence and ask you if you can identify those documents.

A These are cash disbursement sheets from the books and records of Green Engineering Company.

Q What are cash disbursement sheets?

A They are the actual cash that is paid out by check to various obligations, payments for regular bills of accounts and salaries to personnel, bonuses, and so forth, all disbursements from the corporation in cash.

Q In connection with those documents, can you explain to the jury how it was that the cash was generated to pay for these commitments?

A Well, a check as shown right here on one of the pages here, well, approximately twice a year, in the spring and in and around Christmas, these bonuses as I mentioned were actually paid in cash to employees with appropriate federal withholding taxes withheld and the cash distributed to the employees and taken as a business deduction; the money that went to the Government went to the Government; the monies that were kept by the employees, approximately a third, were kept by the employees, and the other portion came back to our political -- to our funds, so to speak, or whatever you want to call it that we use to pay our part of the commitment.

Q How can you tell, looking at these sheets, that cash was generated in this manner?

A I know that it happened. I know the names and I know the people and I was involved.

Q Will you point a couple out to the jury so the jury can understand exactly what we are talking about?

A Well, there is, for instance here, there is Vernon Campbell, Stuart Friedman, Elma Griesely, Isaac Sheena, Samuel J. Green --

Q Does that reflect the bonuses that they got at that point in time?

A Yes, they do.

This is in December, approximately December 24,

1970, the day before Christmas.

Q And tell us, if you will, as to the bonuses that are involved here, just on one name.

A On Mr. Campbell, there was a $5,000 bonus, Mr. Griesely, a $4,000 bonus.

Q All right.

Let us go, let us talk about Mr. Campbell, just as an example, so one-third of that $5,000 would go to him himself?

A Yes, sir.

Q One-third would go for taxes?

A Yes.

Q And the other third would come back?

A Yes.

Q In other words come into the slush fund, so to speak, to Mr. Green and yourself?

A Yes.

Q Now, in connection with your conversations with Mr. Green initially about meeting the commitments to Mr. Christenfeld of some 40,000 or 45,000 dollars --

MR. GILLEN: I will object to the continual repetition of the witness' testimony.

THE COURT: No, I think it identifies it.

Overruled.

BY MR. KAPLAN:

Q In that regard, Mr. Friedman, can you tell us any conversations that you had with Mr. Green regarding what activities would be required to generate the cash, in other words increasing employee bonus monies or whatever?

A Well, it became more and more difficult to generate cash at the time. It was a never-ending cycle of raising enough cash to meet these commitments in terms of the normal cash flow of any business, and there came a time when we had to resort to other techniques to derive cash.

Q Now, did there come a time when cash was generated for the purposes of paying a part of this commitment?

A Yes.

Q When did that take place?

A Well, 1970, early 1970.

Q Do you know if there was one in 1969?

A There could have been. I am not that specific on dates.

Q Do you know the exact dates?

A I don't know the exact date.

Q By the way, were the records kept of payments in connection with these commitments?

A Yes, there were.

Q How were they kept?

A They were kept on index cards.

Q Who kept them?

A I did.

Q Would you give the jury a general idea as to what would go on these index cards?

A Well, very simply, an index card, because it became very complex with these commitments, was kept to report the total obligation that had to be met, and generally speaking that was kept on the card and in simple one or two word explanations as to what the job was and the amount of money that was paid against it at the time, and what was paid until the commitment was finished, and then at that time the card was destroyed.

Q Did there come a time when all of these cards were destroyed?

A Yes.

Q Who destroyed them?

A Myself and Mr Green.

Q When was that?

A I would say December 1972.

Q Was there a card for Mr. Christenfeld?

A There was a card for those jobs that pertained to Mr. Christenfeld, yes.

Q And in that regard the various dates and

amounts were on that card?

A At that time that would have been on them, yes, and whatever obligations were against that towards, towards that job.

Q Now, do you recall generating certain amounts of cash for Mr. Green?

A Yes.

Q Approximately how much?

A Anywhere between 12, 16 thousand dollars in cash.

Q Do you have any specific idea of the exact number?

A Not really, they were in denominations of two, three, four thousand dollars at a time.

Q By the way, did Mr. Green in connection with making payments also take money out of his own pocket at certain times?

A Yes.

Q When there was no money in the fund?

A Yes.

Q Did he cash checks for this purpose as well?

A Yes.

Q Was there anyone else who received money in connection with making payments to Mr. Christenfeld?

A Yes, Mr. Zelouf.

Q What happened in that respect?

A Well, the payment was obviously due at that time and Mr. Zelouf would come to Pittsburgh and he desired to obtain funds and requested money; at that time I had some and I gave it to him, he went back to Long Island with the money.

Q Did he say he paid Mr. Christenfeld?

A Yes, he reported that to me.

Q Was that payment placed upon the card as a part of the commitment?

A Yes.

Q Did you have conversations --

MR. GILLEN: Your Honor, I will object. This is hearsay testimony, and I don't --

THE COURT: See if you can do it without your making the statement, Mr. Kaplan.

MR. KAPLAN: I'm sorry.

Q Now, in connection with your conversation with Mr. Green, did you have conversations with him in connection with payments?

A Yes.

Q And what were the nature of the conversations?

A The nature of the conversations were that they also had to make payments and that from time to time he would make trips, a couple of times in, and I distinctly remember

at least two where he took funds and told me he was taking funds, and placed them in white envelopes and went to New York, Long Island, to deliver them to Mr. Christenfeld and I duly recorded them on the card.

Q As to the total amount of cash paid to Mr. Christenfeld, would that include Zelouf and Green?

A Yes, that included them.

(continued next page)

aml

Q Will you tell us what else went on the card other than payments to Mr. Christenfeld in cash?

A Well, there were other types of commitments that were found to be susceptible or allowed. And in the further conversations with Mr. Green and Mr. Christenfeld that I was informed of that were to be permitted to be used to fulfill the obligation commitment we had. And these were different types of payments.

Q By the way, were these political contributions regular contributions such as journal ads, dinners, tickets, as you understood it?

A Yes.

Q Did they go on the card?

A Yes.

Q And when Mr. Green or Mr. Seloff would have occasion to write checks to the parties, would those go on the cards?

A Yes.

Q Did you have conversations with Mr. Green and Mr. Seloff in that regard?

A Yes. They would tell me about it.

Q Did there come a time when you had a specific conversation with Mr. Green concerning another method where the commitment would be met?

A Yes.

Q Do you recall approximately when that took place?

A On that, sometime in 1970. It involved the retaining of a lawyer to fulfill the commitment as part of our obligation on the job.

Q I show you what has been marked as Government Exhibit 14 in evidence. I ask you if you can identify this file.

A Yes, I ca.

Q What is it?

A This is a file that is composed of disbursements and a retainer letter of agreement with Mr. Harry Pelz, attorney. And I remember the letter -- I don't see it right in here -- that we hired Mr. Pelz as an attorney, as a retainer.

Q Did there come a time in that connection when you had a conversation with Samuel J. Green?

A Yes.

Q What did you say and what did he say to you?

A Well, he told me he had had a conversation with Mr. Christenfeld and that Mr. Pelz was a means or a method of satisfying this obligation by hiring him as a consultant or as a legal retainer -- excuse me -- as a legal counsel,

which would give us a substantial benefit in that it would give us a free tax deduction while at the same time meeting the full commitment.

Q Can you tell us specifically what that benefit would be?

A Well, the benefit of a free tax deduction in this situation would be to take the expense for legal counsel, although he was never to do any legal work. That was a known and given understanding. It would be simply to hire him and write quarterly or monthly -- I don't recall exactly how often it was done. It can be checked by the file. But to write monthly checks to him and take him as an ordinary business deduction as a professional service expense, which is an allowable expense. And by doing that it would come off our income and therefore lessen our income, and therefore reduce our taxes to the Federal Government.

Q Do you know approximately how much was paid to Mr. Pelz over the period of years?

A Well, I have to look through this. But I know there were $500 increments. And they went on approximately every quarter. There had to be -- oh, a couple of thousand, I would suspect, at least.

Q You don't have a specific recollection?

A No.

Q Would it refresh your recollection if I told you there was $18,000?

A It could have been.

Q On a monthly basis?

A Monthly. You know, it could have been -- I don't know the exact amount in my head. I know I wrote a transmittal letter with every letter that went out. It's in the file. I'm sure if you go through it --

Q In connection with the retainer letter, how was that prepared?

A The formal retainer letter was retained by Mr. Green and written in such a way as to allay any suspicion that it was not a retainer -- it was a formal retainer letter hiring Mr. Pelz.

Q In connection with your conversation with Mr. Green relating to his conversation with Mr. Christenfeld, was there any intention that Mr. Pelz perform any legal work?

A Absolutely not.

Q By the way, were there attorneys handling the business of Green Engineering, Green Associates at that time?

A Green Engineering, there was an attorney. Yes. In Pittsburgh.

Q Was -- by the way;, what is the name of that

attorney?

A Friedman and Friedman.

Q Did they also have occasion to work for Green Associates?

A Green Engineering?

Q No.

A Samuel J. Green. Yes.

Q I show you what has been marked as Government Exhibit 16 in evidence and I ask you if that refreshes your recollection as to the performance of legal work --

MR. GILLEN: I object. He just said that they did legal work.

THE COURT: Yes, sustained.

Q By the way, did Mr. Pelz ever perform any legal services?

A No, he never did. Not that I know of.

Q Did you ever speak to Mr. Pelz?

A No, I did not. I don't know Mr. Pelz and I never spoke to him.

Q By the way, are you aware of a letter that was sent to Mr. Pelz concerning an audit by the accounting firm of Lybrand and Ross?

A Yes, I am.

Q Will you explain that to the jury?

A That was a routine letter that was sent at the time Cooper and Lybrand -- a large accounting firm -- was auditing our firm in connection with a possible acquisition of our firm. And as a standard form and routine audit of this nature they contacted any and all legal counsel that had been retained by the firm to find out if there are any contingent liabilities, past liabilities or potential problems that could exist. But it's strictly a routine function.

Q You forwarded the letter to Mr. Pelz?

A Well, Cooper and Lybrand forwarded it to them.

Q Well --

A It might be under my signature or Mr. Green's signature. Yes.

THE COURT: The auditors don't let you send out those inquiries yourselves, do they?

THE WITNESS: Well, they prepare the letter. But you must sign them. They send them out, yes.

THE COURT: Yes.

Q Now, in connection with the payments to Pelz, were these kept on the card?

A Yes, they were.

Q Did there come a time when you learned that a second method by which a payment would be made?

A Yes. This method of payment was either told to me, I think originally by Mr. Seloff, that we were to hire on the payroll as a normal salary, a secretary. I believe Olga Mrozack. And she was to be paid -- I forget the exact amount of money -- but paid every week. Weekly or biweekly as on our regular payroll, on the Samuel J. Green payroll, and she was.

Q Did you have a conversation with either Mr. Seloff or Mr. Green about this matter?

A Mr. Seloff, yes.

Q Do you recall if Mrs. Mrozack was doing any work or intending to be performing any services?

A She did not do any work.

Q Did you know who she was?

A I did not know her. No.

Q Was she placed upon the payroll as a salary wage earner?

A Yes. Eventually I think. For -- at first she was hired as a temporary help. And then we switched her to the actual payroll so she would receive the -- be on the payroll and receive a W-2 and so forth.

Q In any event, she was taken as a business expense from the beginning?

A Yes. In the same nature to obtain the free

tax deduction advantage to reduce the commitment.

Q What was the amount? Do you recall?

A No. It was a small salary of --

Q $50 a week?

A Something like that. Or it was not a -- it went on for a while. At least a year that I know of.

Q Do you know if it went on for three years?

A Could have . I don't remember the termination. I believe that everything terminated -- oh, by the end of December, 1972 or thereabouts because at that time, as far as I know, we -- as I mentioned, the commitment was ended. So she would have been ended at that time.

Q How did it come about that the people were terminated, both Pelz and Mrozack?

A It came about that they were terminated because the commitment of dollars that had to be paid on this job was met and paid and fulfilled.

Q By the way, did you know that the Democrats left power in January of 1971?

A I wasn't too aware of the political situation. I do know that the political scene shifted and changed. Yes.

Q And the payments continued in '71 and '72; is that correct?

A Never changed in any of our commitment obligations or payments.

Q Will you explain that to the jury?

A Well, simply that it was irrelevant whether or not power changed or didn't change with political parties. When the commitment was made, it was a commitment to be honored and paid. It was a deal that -- as written or struck as if it were written, and it was an agreement. A commitment was honored.

Q Did you know if Mr. Christenfeld was going to come back in power at the next election?

A I had no idea. No.

Q What ultimately was done with these payments to Pelz and Olga Mrozack?

A They were taken as business deductions under the tax returns applicable to the years in which they were paid.

Q Who prepared the tax returns?

A I did.

Q Were they taken as an ordinary and necessary business deduction?

A Yes, they were.

Q What is the ordinary and necessary business deductions or business expenses?

A As defined by an accountant and by the Internal REvenue Service, it's an ordinary business expense for the conduct of a business legally expended for the purpose of that business.

Q Were either Pelz or Mrozack performing any ordinary or necessary duties or otherwise to Green Engineering or any of its subdivisions?

A No, they were not.

Q I show you what has been marked as Government Exhibit 21 in evidence. I ask you to review that tax return.

A Yes.

Q Who prepared that return?

A I did.

Q Are the payments to Pelz and Mrozack reflected in that return?

A They would have to be if this was the return for '71. Those payments were made during those years. They were taken as salaries and wages on line 13. And there are other deductions on line 26 which encompassed professional service expenditures, which is delineated here on line 26, other deductions on attached schedule.

Q Well, Mr. Friedman, you had occasion to review the books and records in connection with this case,

haven't you?

A Yes.

Q In connection with Olga Mrozack, she was on the payroll as a salaried wage?

A Yes.

Q In connection with Harry Pelz, was he on the payroll as professional services?

A Professional services.

Q Did you have occasion to determine that they were reflected in there?

A Yes.

Q Have any promises been made to you in connection with testifying in this court?

A No promises have been made.

Q Well, is there an agreement with your attorney as you understand it?

A There is an agreement with my attorney as I understand it, yes.

Q Is it your understanding that you will not be --

THECOURT: What is the agreement?

THE WITNESS: The agreement is, as I understand it from my attorney -- and I am not that versed legally -- that I will not be prosecuted for any testimony that I give here in this district court.

THE COURT: Well, you won't be prosecuted for any crimes that are disclosed by your testimony.

THE WITNESS: Yes.

BY MR. KAPLAN:

Q Well, I don't know if that is correct, Mr. Friedman. First, you realize that as with respect to your testimony, nothing you say will be used against you in any other proceedings? You realize that?

A Yes.

Q In connection with your testifying in this district as to these transactions within the jurisdiction of the Eastern District of New York, you realize you won't be prosecuted in this district?

A Yes.

Q But that promise doesn't relate to other districts as far as Pittsburgh?

A Yes. As I understand it, yes.

Q Is this agreement contingent upon your truthful and complete disclosure --

MR. GILLEN: This is absolutely self-serving. That truth is for these good people here.

THE COURT: Wait a minute. Let's not have a lecture.

MR. GILLEN: Yes sir. But this is --

THE COURT: Are you making an objection.

MR. GILLEN: I certainly am.

THE COURT: All right. Objection sustained.

MR. KAPLAN: I have no further questions.

THE COURT: All right, you may cross-examine, Mr. Gillen.

CROSS-EXAMINATION

BY MR. GILLEN:

Q Mr. Friedman, is part of your agreement that nothing you say here will be made known to the authorities in Pittsburgh?

A No. As far as I know, it's not -- that's not part of it. I don't know for sure. My lawyer handled the total details of the agreement.

MR. GILLEN: Excuse me for a moment.

MR. KAPLAN: I think the record should reflect this has been previously marked and turned over to Mr. Gillen.

MR. GILLEN: It's been marked, but I don't have a copy.

MR. KAPLAN: It's been turned over on the record in your presence.

MR. GILLEN: Well, it's been turned over. I can't help it.

THE COURT: Are you going to examine the next witness?

MR. MARCUS: Yes, your Honor.

P E T E R F L A C K, called as a witness on behalf of the Government, having been duly sworn by the clerk of the court, testified as follows:

THE COURT: You may be seated.

Now, Mr. Flack, it is some distance to the jurors so talk loud enough so that Mr. Marcus can hear you. And if he can hear you, so will everybody else.

DIRECT EXAMINATION

BY MR. MARCUS:

Q What is your present address?

A 8 Rose Avenue, Great Neck, Long Island.

Q What is the nature of your present employment?

A I am a partner in a consulting engineering firm of Flack and Curtis.

Q Where is that firm located?

A The firm is located at 29 West 38th Street, in New York City.

Q What is the nature of the business that you are in, Mr. Flack?

A We perform consulting engineering services.

and 50 per cent, it would vary as to the amount; the amount would fluctuate.

THE COURT: It would vary as to what?

THE WITNESS: Our business in the public sector, that is for municipalities, towns, state, city-type projects, the rest of it would be private, for private clients.

Q Would those percentages fluctuate from year to year?

A Yes, they would.

Q Which public or governmental bodies did you have occasion to do consulting engineering work, Mr. Flack, in the period covered by the late 1960's and early 1970's?

A Preponderantly the public work that our firm, my firm was engaged in at that time was for the Nassau County Department of Public Works.

My firm also during the time had contracts for the design of schools for the City of New York, engineering, and also for various state agencies.

Q With respect to the governmental work that you did, were these bid contracts or personal service contracts?

A No, the engineering services were personal service contracts.

Q Would you briefly explain to the jury what a personal service contract is?

A Well, a personal service contract is one where a client selects on the basis of qualifications the consultant to perform the services rather than, say, by bidding for these services.

Q Are these public service contracts within the discretion of the Department of Public Works and the county to give out?

A Yes, they are.

Q The jobs do not go to the lowest bidder, in other words, do they?

A No.

Q Mr. Flack, how are fees generally set on personal service contracts?

A The fees on public works are always negotiated within a range of percentages of the actual cost of construction of a particular project and these would be subject to negotiations with the representative of the client.

Q Are these municipal or public service contracts generally a lucrative job to obtain?

MR. GILLEN: Objection, your Honor.

THE COURT: I think it is in pretty general terms. I will sustain the objection.

Q Mr. Flack, will you tell the Court and jury on the basis of your experience for the past fifteen years as a consulting engineer on what basis, to the best of your knowledge, are personal service contracts awarded by Nassau County?

A The basis has been on first of all technical capability of the firms that were interested and called in to do the work; the availability of the firm, if it was not overloaded with work at a particular time; and politics.

Q Mr. Flack, did there come a time when you received an initial personal service contract from Nassau County?

A Yes, I did.

Q And when, roughly, was that, if you recall?

A It was roughly in the early months of 1966.

Q What job were you supposed to perform in connection with that contract?

MR. GILLEN: Your Honor, I will object, it is without the period of the indictment. I believe our time frame is '69 to '72 or '73 --

THE COURT: I take it that --

MR. GILLEN: If it is just for historical purposes, all right, but --

MR. MARCUS: It is to give the jury, your

A He was at one time Commissioner of Public Works for the Nassau County Department of Public Works.

Q Do you recall if he was the commissioner at the time that you attended these Democratic Party functions?

A I believe he wasn't at that time in late 1960s.

Q Do you recall seeing any particular party functionaries, officials of the Nassau County Democratic Party at any of these particular functions?

A Over the period of time in question I met several party officials including Mr. English.

Q Who is Mr. English?

A Mr. English at that time was chairman of the Nassau County Democratic Party, and I also recall that among other party officials there might have been local party functionaries and also --

Q Did you ever have occasion to meet Mr. Christenfeld at any of these Party functions?

A I was introduced to Mr. Christanfeld at one time, yes.

Q Did you ever have occasion to learn what position he held?

A I knew generally that he was associated in an influential position with the Democratic Party.

Q Did you have occasion to learn that he was the

vice-chairman of the Nassau County Democratic Committee?

A I did at one point, yes.

Q Did you ever have occasion to learn --

MR. GILLEN: I object to any further leading, your Honor.

THE COURT: Sustained.

Q You testified, Mr. Flack, that you had occasion to contribute to the Nassau Democratic Party from time to time.

Do you recall during the years in question what the general amount of your contributions might have been on an annual basis to the Democratic Party?

A Yes, I would contribute between approximately -- I would say between $1,000 and $2,000 a year to the Party.

Q During the years from early 1960s right through 1970 or 1971, do you recall ever having an occasion to contribute more than roughly $2,000 on any given year to the Nassau Democratic Committee?

A No.

Q These annual contributions were made for cocktail parties and dinner dances?

A Yes.

Q During this period of time, were you aware of which party was in power in Nassau County?

A Yes, I was aware that at that time that was a Democratic administration and Mr. Nickerson was the County Executive, he was a Democrat, and I also knew that, of course, the Commissioner of Public Works was Mr. Simens, who was a Democrat.

Q Did there come a time in the late 1960s when you had occasion to go to Party headquarters, to the Nassau Democratic County Party headquarters?

A Yes.

Q How frequently did you go there?

A I was, I would say, I would say perhaps between two or three timses a year that I might stop in at Party headquarters.

Q Did you ever have occasion to meet Mr. Christenfeld from time to time at party headquarters?

A I did, yes.

Q Did you ever have occasion from time to time to have conversations with Mr. Christenfeld?

A Yes.

Q Do you recall what the general subject matter of those conversations was with Mr. Christenfeld?

A The subject of the conversation was generally that -- I was working for the County at the time on public work and I was interested in obtairing additional work and Mr. Chris-

tenfeld knew that I, of course, that I had been working for the Department of Public Works, the County, and he from time to time asked, asked that I make contributions.

Q Did you have occasion to discuss contracts with Mr. Christenfeld from time to time?

A Well, the only contracts I would say specifically, well, only in general terms, I would not say we specifically two talked about it.

Q When you say in general terms, would you describe in general terms what the conversation was that you had?

MR. GILLEN: For him to describe it?

THE COURT: He can try to describe it.

Overruled.

See if you can answer the question.

A Well, Mr. Christenfeld knew that I was working for the Democratic Party -- on public works projects including the power plant in those years.

THE COURT: You don't mean that you were working for the Democratic Party?

THE WITNESS: No, I mean -- no, that I was working for the Nassau County Department of Public Works under a contract.

Q You are referring to personal service contracts that you had obtained from the county of Nassau, Department

of Public Works?

A Yes, yes.

Q Mr. Flack, directing your attention to late 1968, do you recall having a specific conversation with Mr. Christenfeld at that time?

A Yes.

Q Where did you have that conversation with Mr. Christenfeld?

A Well, I had acall to come to party headquarters and we had a conversation, Mr. Christenfeld and I, we had a conversatinn in his office at the Nassau County headquarters.

Q Do you recall who called you?

A It was a call from the office and --

Q From Mr. Christenfeld's office?

A From the County Democratic Party headquarters.

Now, who made the telephone call? It was a secretary, and I can't say, I don't recall whether it was his secretary at the time that I spoke to or to him directly at the time.

Q Did you have occasion to actually meet with Mr. Christenfeld at that time?

A Yes, I did.

Q Where did you meet him?

A I met him in his office at Nassau County Democratic

Committee headquarters in Mineola.

Q Do you recall the location of the party headquarters?

A Well, it was at 240 Mineola Boulevard at that time, as I recall.

Q And where specifically at 240 Mineola Boulevard did you meet with Mr. Christenfeld: do you recall?

Was it in a particular room or office?

A Well, we met in a private office.

Q Was that Mr. Christenfeld's office?

A Yes.

(continued next page)

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Q Was anyone else present --

A No.

Q -- at that conversation?

Do you recall in words or in substance what Mr. Christenfeld said to you at that meeting in late fall of 1968 and what you said to him?

A Mr. Christenfeld at that time aske d me to make a substantial contribution on the order of $8 or $10,000 to the Democratic Party.

Q Did he mention any specific -- a specific amount of money to you?

A Yes, he did.

Q Do you recall the specific amount?

A It was on the order of $8 to $10,000.

Q By the way, Mr. Flack, have you ever contributed anything in the neighborhood of $10,000 in a given year to the party?

A No.

Q What else was said in connection with this discussion of $10,000?

A Well, the -- I said I didn't have the cash to make that kind of contribution. And I asked Mr. Christenfeld if there was some method that I could make a contribution -- make this contribution -- what means -- what other means were

there for making such a contribution that he could suggest to me. And he suggested to me that one of the methods was that he -- he said the Democratic Party had a lot of printing bills. And could I -- one way that he suggested I could -- he could arrange to get the printing bills billed directly to my office. And in that way I would run it through my office. And effectively it would be tax deductible item for myself. I could pay through that way.

Q What was the advantage of making a contribution to the Nassau County Democratic Committee in this way?

A Well, the advantage to me was that I -- as I stated, I didn't have the cash at the time, which was the case. And running it through my firm effectively I was saving on -- there would be a tax benefit to me personally. Because it was an item that would be deducted from the gross income of my firm. So that on -- assuming , say, $8,000 -- $8 to $10,000 that we discussed, I would save something of the order of 40%, or roughly $3, $4,000 by running it through the firm as a fact of a deductible expense.

Q Were the advantages of making a contribution in this manner discussed generally at the time with Mr. Christenfeld?

A To the extent that I have mentioned before, that I could run it through my business and that way deduct it

from my annual income.

Q And that came out in the course of the conversation with Mr. Christenfeld?

A In essence, yes.

Q By the way, did you have occasion to discuss personal service contracts with Mr. Christenfeld at this particular meeting in general terms?

A Only in general terms. To the extent that Mr. Christenfeld knew that -- He said, you know, that I had good -- I had done good work for the County. And that was really the extent of it.

Q Did Mr. Christenfeld have an occasion to make any particular suggestion to you in connection with this method that you just described?

MR. GILLEN: I object, your Honor, the question is --

THE COURT: No. If it's not going to be leading -- it has to be general. I will overrule the objection.

Any further --

Read it, Mr. Barbella.

(Question read.)

A Only to the extent that I would be able to run it through my business.

Q And did he have occasion to suggest a particular

printer or printing bill that might be utilized for this purpose?

A Well, the arrangements that Mr. Christenfeld made was -- he told me that he would -- he would get the printing bills billed directly to my office from a printer. It was the Brooklyn Letter Service.

Q By the way, had you ever heard of this printer, the Brooklyn Letter Service, before this time?

A No. I hadn't done any business with this particular --

Q During your whole career as a consulting engineer, had you ever hired the Brooklyn Letter Service to perform any printing services at any time for you?

A No. I didn't know this particular printer. I had worked --

Q So Mr. Christenfeld suggested the name of the Brooklyn Letter Service to you?

MR. GILLEN: Objection. That's what he just testified to.

THE COURT: Yes. I don't think you have to repeat it.

Q Was any specific amount of money discussed with respect to this printing bill?

MR. GILLEN: Objection.

THE COURT: Overruled. You may answer.

MR. GILLEN: I withdraw it, your Honor.

A The sum of money was the $8,000 that had been under discussion as a contribution.

Q Did Mr. Christenfeld have occasion to tell you how much the printing bill would be that you would get?

A Yes. He would arrange for the Brooklyn Letter Service to bill me in that amount.

Q Did you ever have occasion thereafter to receive a bill or bills from the Brooklyn Letter Service?

A Yes, I did.

Q Do you recall when you received a bill from the Brooklyn Letter Service?

A I received two bills from the Brooklyn Letter Service. One was dated -- I believe it was early October, and the second bill was dated December -- I believe it was December 1st, in the sum of $8,400.

MR. MARCUS: Your Honor, I would like to have these two exhibits marked.

MR. GILLEN: Your Honor --

MR. MARCUS: Is there any objection?

MR. GILLEN: Just let me take a look at them. I am sure there is no objection.

Well, the only -- All right, I have no objection.

THE CLERK: Two documents marked Government's

Exhibits 26 and 27 in evidence.

Q Mr. Flack, I show you what has been introduced into evidence, Government Exhibits number 26 and 27. I ask you if you can identufy these documents?

A Yes. These are the two bills that I received for printing expenses for Brooklyn Letter Service.

Q Was that pursuant to the conversation you had with Mr. Christenfeld?

A That followed shortly thereafter. Yes. I'd say one was received in -- October 1st of '68 and the other -- it's dated December 1, 1968.

Q What were the amounts reflected in those two bills?

A The amounts reflected, printing of brochure material. The first bill was for $2,000. And the second bill was for $6,400 for printing brochures, which I presume were brochures for the -- done -- they were not done for me. So I presume they were done for the county for whatever bills they had.

Q Mr. Flack, to whom are the bills addressed?

A They were addressed at that time to Peter Flack, Consulting Engineers, which is --

Q Would you again keep your voice up?

A Which is my firm.

Q Is the address of your firm --

A Yes, that's the address of my firm, 45 W. 34th Street in New York City.

Q By the way, did you have occasion to give Mr. Christenfeld your address? Was he aware of your address?

A Yes.

Q You will notice, Mr. Flack, also, with respect to these two bills, Government exhibits 26 and 27, there are particular descriptions there. With respect to Government exhibit 26, it says 100,000 brochurs 17 x 22 offset, four-colored, one slide, and describes the particular material. And then 27 describes 30,000 brochures, 11 x 17 offset.

Did those descriptions reflect any work actually incurred for your company, Peter Flack Consulting Engineers?

A No, it did not.

Q Mr. Flack, did you ever have occasion to pay these bills?

A I did.

Q Do you recall when you paid them?

A Yes. I paid them during 1969. And I paid them by check.

Q You paid them by check. Do you recall specifically what kind of check you paid them with?

A Yes. I paid them with my Peter Flack Consulting

Engineers check during --

Q Business checks?

A Business checks.

MR. MARCUS: Your Honor, I would like to have these documents marked for identification.

MR. GILLEN: No objection.

MR. MARCUS: Four documents marked into evidence at this point.

THE COURT: All right. Mark them.

THE CLERK: Government's number 28 in evidence.

Q Mr. Flack, I show you Government Exhibit 28. I ask you if you can identify it?

A They are my checks. My signature.

Q To whom are these checks made out?

A They were made out to Brooklyn Letter Service, Inc.

Q In what amount were they made out for to the Brooklyn Letter Service?

A The four checks -- one was dated February 7 of 1969 for $2,000. There was a second check dated April 2 for $2,000. The third check was October 21, 1969 in the amount of $2,000. And the final payment is a check dated December 5, 1969 for $2,400.

Q What was the total amount of the four checks that

you had made out?

A $8,400.

Q That was pursuant to the invoices you had received?

A Yes.

Q This figure of $8,400 reflected in these four checks, is that approximately the amount Mr. Christenfeld mentioned to you at party headquarters?

A Yes. I think I have already said that. Yes.

Q Did you ever have occasion either prior or subsequent to this particular meeting with Mr. Christenfeld in the fall of '68 to do any business with the Brooklyn Letter Service?

A No.

Q Did you meet or speak with any of the officers, agents or employees of the Brooklyn Letter Service?

A No, I did not.

Q In fact, you weren't aware of the company altogether, were you?

A That's right.

Q Did these bills -- these checks actually reflect any work -- any work incurred by Peter Flack?

A No.

MR. GILLEN: Objection, your Honor.

THE COURT: Yes, it's been covered a couple of times. I will sustain the objection.

Q Mr. Flack, what if anything did you do with these invoices and these four checks for $8,400?

A I used the $8,400 reflected by the checks as- I think I indicated previously I used it as a business expense and ran it through my office and deducted it from my -- as a business expense during 19 -- the 1969 fiscal year.

Q Do you recall specifically whether you actually took this $8,400 in expenses as ordinary and necessary business expenses on your 1969 tax return?

A I took it on my schedule C as a business expense.

MR. MARCUS: Your Honor, I would like to have this document marked for identification.

THE COURT: Mark it.

MR. MARCUS: Any objection?

MR. GILLEN: No objection.

Well, the only objection I have, your Honor, is the one I made pre-trial under the statute of limitations.

MR. KAPLAN: I object to him making legal comments.

MR. GILLEN: Do I have to ask for a side bar?

THE COURT: No. Your pre-trial objections --

THE COURT: Yes, that is a legal point.

Q What in fact was the $8,400 --

MR. GILLEN: Objection. This is the --

THE COURT: I think it's all clear from the evidence. The objection is sustained.

Q Did you know at the time of your conversation with Mr. Christenfeld late in the fall of 1968 that it would be improper to take this as an ordinary and necessary business expense?

MR. GILLEN: Objection.

THE COURT: Overruled. That he may answer.

THE WITNESS: Yes.

Q Is it clear from the tone and tenor of the conversation that in fact this would be an improper deduction?

A Yes.

Q After this conversation that you had with Mr. Christenfeld late in the fall of 1968, did you ever have occasion to receive any further personal service contract from Nassau County?

A Yes. I received a contract in -- I think it was early in May of -- approximately that time in 1970 for another project which was the -- it was the modernization of the old County Courthouse in Mineola. That was the

that I would have a better chance of being considered for work than if I didn't. That's exactly what I've always had in mind and it's in my mind to this day. It's exactly the way I feel about it."

Did you make that statement, sir?

A Yes, I did.

Q Now, will you tell us what you meant when you said that by making contributions you feel you would have a better chance of getting work?

A If you are going to the history of the time that we are discussing here, Mr. Gillen, you would find that contributions had everything to do with obtaining work in Nassau County under the Democratic administration at the time, the contributions that you made, decides your technical competency.

Q Okay.

But do you agree that the statement was a truthful statement which you made before that grand jury back in 1970?

A I believe that as far as it went it was a truthful statement, certainly the competency had a lot to do with it.

Q Now you told us, did you not, in connection with the 1967 contract which had to do with a power plant that

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Q All right. But isn't it a fact that it was you that asked to see Mr. Christenfeld, that is what I am getting at?

A Yes.

Q Or is it a fact that someone else, either Mr. Christenfeld or his secretary, asked you to come and see them: which was it?

A I think I -- I think that it was -- it is clear from the conversation that the telephone call was placed to men and I was asked to contribute, and I said before I could make a contribution I want to come in and discuss it at party headquarters.

Q Now, were you asked the questions and did you give these answers on page 135, the bottom of the page, the last line:

"Question: You made the appointment with his secretary, is that correct, sir?

"Answer: Yes, that is correct.

"Question: Did you speak to anyone else concerning this particular contribution?

"Answer: No, I did not.

"Question: Did you mention it to any of the engineers at the department of public works?

"Answer: No, I never mentioned any contribution.

"Question: Did you mention it to Mr. Simins?

"Answer: No, I did not.

"Question: Did you mention it to Mr. Pomerantz?

"Answer: No, I never --

"Question: Did you mention it to Mr. Alan Michael?

"Answer: No.

"Question: You are absolutely certain?

"Answer: Absolutely positive.

"Question: Did any of the aforementioned individuals tell you to contact Mr. Christenfeld prior to your making that contribution?

"Answer: No. All of my discussions with any of the individuals that you've named were strictly to do with field meetings when we had them or anything to do with the work that I was doing. Had nothing to do, ever, with the Democratic Party."

Were you asked those questions and did you give those answers?

A The answer is, yes, my answer to that question is, yes, that is quite correct, that is that there was never any direct involvement between --

MR. GILLEN: I move to strike and ask that it be answered specifically, that he answer the specific

question.

THE COURT: Well, he answered yes. Go on.

MR. GILLEN: All right.

Your Honor, I would just like to say one thing on the record --

MR. KAPLAN: I'm going to object.

MR. GILLEN: This has something to do with Mr. Marcus, to whom I apologize because in a fit of temper I said what I did. I really do apologize.

THE COURT: All right, all right.

Q Page 365, the same exhibit, in the middle of the page:

"Question: How did it come about that you were billed for it?

"Answer: I had a discussion with Mr. Christenfeld that I referred to, and I said that I would like to make, help the Democratic Party and make a sizable contribution. He asked me whether I could, was in a position that I felt that I could contribute $10,000. I said, 'No," I didn't think I could. I could contribute perhaps $8,000, but I couldn't, I didn't have the funds to do it all at once, but I would like to help the party, and was there some other way, perhaps I could do it by picking up printing bills and have them bill my

office. He said he thought --

"Question: He suggested that to you originally?

"Answer: No, I asked him, I think."

Were you asked those questions and did you give those answers?

A I answered, I think, yes, it was --

Q Were you asked those questions and did you give those answers, sir, before that grand jury?

A On that particular -- on -- at that particular time, those, those were the answers, but I am not a lawyer in giving answers --

Q Excuse me.

Were you telling the truth, Mr. Flack?

A Yes.

Q Fine.

MR. GILLEN: I will --

A Yes, I was, I believe I was.

MR. GILLEN: Fine. That is all right.

All right. Page 369, at the bottom of the page:

"By that Juror:" -- whoever that is --

"Question: For the printing?

"Answer: No, they said that they had large, that they had large expenses which I knew obviously

during any, '68 was a major campaign, as you probably know, and I contributed to the Democratic Party as you know, and so it, the amount, or the fact that they were printing business, I said I wanted to do it, to do it through the, through my firm, and was there any way of that, you know, any legitimate way of contributing to the party rather than as individual, I might do it as an individual, but I would like to do it through the, through my business because, because it was a business, the business is a proprietorship. It's a consulting engineering firm. I am responsible for all of my debts, etc. He said, Well, as a matter of fact, you know we do have large printing costs."

Were you asked that question and did you give that answer?

A The questions that you are referring to had to do with my conversation with Mr. Christenfeld.

Q Were you asked those questions and did you give those answers, that is my question, in that grand jury?

A Well -- taking -- yes, I did.

Q If you have any question, I will be glad to show it to you.

A Taking it in context, I know what you are referring to, Mr. Gillen, taking -- it is taken out of context but

that is neither here nor there.

Q I am sorry, there is at least 100 pages here.

THE COURT: I have some of the 2 o'clock matters, probably it would be better to take a recess now.

I think we will be a half hour, ladies and gentlemen. You can go back to the jury room and if you want to go down to the canteen or make a telephone call, you can do so so long as you bear in mind that you are not to talk about the case or to the parties in the court room.

MR. GILLEN: Again, I apologize to Mr. Marcus at this point.

THE COURT: You may step down.

We will need you in about a half hour.

(The jury then left the court room at 2 p.m.)

(The witness was also excused.)

(continued next page)

right?

THE WITNESS: I said that I deducted this from my taxes, yes.

Q You also said that Mr. Christenfeld discussed your taxes with you, did you not?

A I don't think that I used those words at all, no.

Q Did you ever use the word "taxes" at all in your 1970 133 pages of testimony?

A I don't think I used it directly.

Q Did you use the word "taxes" in the 133 pages of testimony before that Grand Jury?

A Mr. Gillen, it wasn't necessary for me to use the "taxes." Why do I have to use the word "taxes"?

I said I would take it as a business deduction on my income tax return.

MR. GILLEN: I move to strike that.

THE COURT: Yes, strike it out.

MR. GILLEN: I asked specific --

THE COURT: The question is simply whether you used the word "taxes" in 1970.

THE WITNESS: I don't think I did.

Q Well, you have read that testimony before you took the stand, didn't you?

A Yes, I have.

Q Incidentally, in your discussions with the Assistant U.S. Attorneys, did they take notes?

A I noted that when we were talking at times, that on and off that one of the other might write down some information on paper. Yes.

Q Did they ask questions in your subsequent meetings based upon these notes that were written?

A Yes. I would say that they did.

MR. GILLEN: I make the same request, your Honor, the same demand, respectfully that I made before regarding the notes.

Q Was it ever suggested --

THE COURT: Well, go ahead.

MR. GILLEN: All right.

Q Was it ever suggested to you that you do not discuss anything with Mr. Christenfeld after you started speaking to the Government?

A How do you mean? Was it ever suggested to me? Would you explain by whom?

Q Was it ever suggested to you by any Assistant United States Attorney, any Federal Agent in connection with the United States Government that you not speak to him?

A Absol ly not.

either verbally or through memoranda?

"ANSWER: Oh, you know, I told him that this was part of my business expense.

"QUESTION: In other words it was a printing expense of the business?

"ANSWER: Yeah."

Do you recall giving that answer to the Nassau County Grand Jury?

A Yes, I do.

MR. MARCUS: I have no further questions, your Honor.

RE-CROSS EXAMINATION

BY MR. GILLEN:

Q You were talking then and you still didn't use the word "tax", isn't that right?

A Correct.

Q You were talking then to your accountant, not to Mr. Christenfeld, and that is what the record reflects.

A I was talking to Mr. Kramer, answering Mr. Kramer's question.

Q But what Mr. Marcus just read to you related to some conversation you had with your accountant; is that right?

A No, the question that was asked, the question

that was asked and the testimony was what I did with the $8,400, how did I account for it as a business expense --

Q Right, but you testified --

A And I said --

Q Well, you testified as to a conversation with your accountant; isn't that correct?

A Would you re-read that, please?

Q Yes.

Page 372.

"ANSWER: I don't recall how it was recored in my business papers, but, you know, my accountant took care of the bookkeeping."

A Yes.

What is your question in that connection?

Q My question is when the accountant took care of the bookkeeping was Mr. Christenfeld in it?

A No.

MR. GILLEN: I have no further questions.

THE COURT: All right.

Mr. Flack, Mr. Flack, did Mr. Kaplan or Mr. Marcus read his notes to you and ask you if they were right?

THE WITNESS: No.

THE COURT: Did they ever given them to you to

read and check?

THE WITNESS: No.

THE COURT: All right, you may step down.

(The witness was excused.)

THE COURT: Is your next witness ready?

MR. KAPLAN: Can we have a short recess, your Honor, to determine whether the witness is going to be ready?

THE COURT: All right.

The jury will go back to the jury room for five minutes or so.

Don't talk about the case.

(At this point a 10-minute recess was taken.)

MR. MARCUS: The Government is prepared with it's next witness, your Honor.

THE COURT: Very good, bring in the jury.

(At 3:25 pm. the jury took its place in the jury box.)

THE COURT: All right, call your next witness.

MR. MARCUS: Your Honor, the Government calls Sol Seltzer to the stand.

S O L S E L T Z E R, called as a witness on behalf of the Government, having been duly sworn by the Clerk of the Court, testified as follows:

pml 1 S A M P A Z N I C K , having first been duly sworn
2 by the Clerk of the Court, took the witness stand and
3 testified as follows:
4 THE CLERK: State your name and spell it for
5 the reporter, please.
6 THE WITNESS: Paznick, P-a-z-n-i-c-k, Sam.
7 DIRECT EXAMINATION
8 BY MR. MARCUS:
9 Q Your address for the record, please, sir?
10 A 17826 Kildare Road.
11 Q How are you presently employed?
12 A I am president of the Brooklyn Letter SErvice.
13 Q What is the nature of your business?
14 A Printing; offset and direct mail.
15 Q Where is that business located?
16 A 540 Atlantic Avenue in Brooklyn.
17 Q What is the nature of the business?
18 A Printing and lithography for distribution by
19 mail.
20 Q What position to you hold?
21 A President.
22 Q For how long have you held that position?
23 A 38 years.
24 Q Under the name of Brooklyn Letter Service?
25 A Under the name of Brooklyn Letter service,

yes.

Q Directing your attention to the period roughly from 1960 through the early part of the 1970's did you have occasion to do any printing for political candidates or committees or parties?

A Yes, sir.

Q Did you ever have occasion to do any printing for the Nassau County Democratic Committee?

A Yes.

Q What was the nature of the printing you did for the Nassau County Democratic Committee?

A We did lithography printing for the various candidates running for office in Nassau County.

Q You printed prochures and letters and things of that nature?

A Yes sir.

Q In connection with the business that you had with the Nassau County Democratic Committee, who specifically, if you recall, did you have contact with and maintain business with in particular?

A Marvin Christenfeld.

Q Did you know what position he held?

A I imagine he was chairman.

Q You were aware of the fact that he was chairman

of the party?

A Right.

Q What conversations, if any, did you generally have with him, if any, in connection with the printing business?

A He called me and asked me to pick up work for the committee.

Q And did you pick up work for the committee?

A Yes.

Q And where was that, sir?

A At his office.

Q Do you recall where his office was located?

A Mineola Boulevard, I believe, 240 Mineola Boulevard.

Q Did you have occasion to speak to Mr. Christenfeld about accounts in arrears?

A Yes sir.

Q When we use the term "accounts in arrears" would you tell the ladies and gentlemen of the jury what we mean?

A Money due the Brooklyn LEtter Service for over 30, 60 or 90 days.

Q The party inclurred bills that were not met? In other words, the party had incurred bills not

yet fully paid?

A That's right.

Q For printing you had done?

A Yes.

Q Did there come a time when you had a specific conversation with Mr. Christenfeld concerning the payments of some of these accounts in arrears?

A Yes sir.

Q Do you recall where the conversation took place?

A At his office.

Q Do you recall roughly when the conversation took place?

A I do not, sir.

Q I show you what has been marked Government Exhibit 27 in evidence and I ask you if this refreshes your recollection as to the date of a conversation you had with Mr. Christenfeld.

(Document handed to witness.)

A Yes sir.

Q When was that date, if you recall, roughly?

A The date, roughly, would be in September.

Q That's in 1968?

A 1968, yes sir.

Q Do you recall exactly where the conversation took place? I mean, a particular room or office?

A The conversation took place in Mr. Christenfeld's office at 240 Mineola Boulevard.

Q Was anyone else present at that time?

A No sir. Most times we were alone.

Q I'm talking about this particular occasion in September of 1968.

A No, we were alone -- nobody.

Q Do you recall in words or substance what Mr. Christenfeld said to you and what you said to him on that occasion?

A I had continuously been asking him for money that was due the Brooklyn Letter Service from the Nassau Democratic Committee.

Q Did Mr. Christenfeld have occasion to say anything in connection with your pressing him for accounts in arrears?

A Well, he would quite often say to me, as soon as the money comes in he would pay me as it came in.

Q Did he have occasion to say anything specifically on this occasion?

A Yes, sir.

Q What did he say in words or substance?

A He mentioned that if I were to bill a certain party I would get paid from that party.

Q Did he give you the name of that party?

A Yes sir.

Q What was the name?

A Peter Flack.

Q What did he tell you about Peter Flack?

A He told me that Peter Flack -- if I would bill Peter Flack for a given sum of money he would pay me for it.

Q Did he tell you how much to bill Mr. Flack?

A In the area of $8,000.

Q Did he tell you who Mr. Flack was?

A Not really, no.

Q He didn't tell you anything about Mr. Flack?

A No.

Q Did he give you Mr. Flack's address?

A Yes sir.

Q He told you to mail a bill to him?

A Yes.

Q I show you what has been marked in evidence as Government Exhibits 26 and 27 and I ask you whether these reflect the particular bills that you are talking about.

(Documents shown to witness.)

A Yes, they do, sir.

Q To whom were these bills made?

A Peter Flack at this address here (indicating).

Q What is the address on the bill?

A 45 West 34 Street, New YOrk.

Q Who gave you that address?

A Mr. Christenfeld.

Q How many invoices are there?

A There are two invoices.

Q What is the total amount of money reflected in those invoices?

A Approximately $8400.

Q That corresponds to the figure Mr. Christenfeld had given to you?

A Yes sir.

Q You will notice with respect to these particular exhibits, Government's 26 and 27 that there is a description of the work on both of them.

On Government Exhibit 26 it says 100,000 brochures, 17 by 22, offset, one color, two colors, two sides, et cetera, et cetera.

Government Exhibit 27 says, 30,000 brochuras 11 by 17, offset two sides, two colors, fancy finish.

Do these descriptions reflect any work that you actually performed for Peter Flack, consulting engineer?

A No sir.

Q Do these particular descriptions reflect any specific orders actually placed by the Nassau Democratic County Party?

A The Nassau Democratic Party placed similar descriptive brochures with me.

Q I understand.

But, referring specifically to the descriptions in Government 26 and 27 -- 26; 100,000 brochures 17 by 22, offset, does that reflect an actual order placed with you for the Nassau Democratic Party?

A No sir.

Q And Exhibit 27; 30,000 brochures, 11 by 17, was that specifically requested of you by the Nassau Democratic Committee?

A No sir.

Q How did you manage to come up with this description on these two invoices?

A I went to a previously -- a previously given invoice to the Nassau Democratic Committee and I made the bill out similar to the one I had previously made out.

Q By the way, the address, it says, Peter

Flack, consulting engineer on the top of both invoices?

A Yes.

Q That was who you made these two invoices to?

A Yes.

Q That was at the direction of Mr.Christenfeld?

A Yes sir.

Q Did you ever have occasion prior to the time that you had this conversation with Mr. Christenfeld to perform any work of any kind for Mr. Flack or Peter Flack Consulting Engineers or that company?

A No sir.

Q Never performed any work of any kind?

A No sir.

Q Did you know Mr. Flack?

A No sir.

Q Had you ever met Mr. Flack?

A No sir.

Q Subsequent to the date reflected on those particular invoices, did you ever have occasion to do any work for Peter Flack Consulting Engineer?

A No sir.

Q Or Mr. Flack, personally?

A No.

Q Ever meet Mr. Flack?

A No sir.

Q Ever talk to Mr. Flack?

A No sir.

Q Did you actually have occasion to mail those bills to Mr. Flack?

A Yes sir.

Q What if anything happened after those bills were mailed? Did you get paid?

A Yes sir.

Q Mr. Flack paid you?

A Yes sir.

Q Do you recall roughly when?

A During the course of the subsequent months I was paid in four payments.

Q Throughout the year 1969?

A To the best of my recollection, yes.

(continued next page)

G:TR
5/2

DIRECT EXAMINATION

BY MR. MARCUS (contd):

Q I show you what has been marked into evidence already as Government's Exhibit Number 38 in evidence, and I ask you if you can identify these checks.

A I can identify them by my endorsement on the back.

Q To whom are these checks made payable?

A Brooklyn Letter Service, Inc.

Q And who paid those checks to you, who endorsed the checks?

A Who signed them?

A Peter Flack.

Q These were Peter Flack Consulting Engineer checks?

A That's what it says on the checks, yes sir.

Q And the total amount reflected on the four checks is what?

A $8,400.

Q That corresponded to the figure Mr. Christenfeld gave you when you had your conversation with him?

A Yes sir.

Q Did you have occasion to tell Mr. Christenfeld that you were actually paid by Mr. Peter Flack?

A Yes sir.

Q Do you recall when you told him?

A Well, there were two things. I was elated that I got $8,400; that's first and secondly, it reflected itself in the monthly statement that I would send to the Nassau Democratic Committee because I credited that amount of money to the Nassau Democratic Committee.

Q Explain what you mean by crediting this $8,400 to the Democratic Committee of Nassau County.

A As we were doing work for the Nassau Democratic Committee we billed them and it was on one part of the ledger that we owed them the money (sic.)

Monies received I would credit against the account and they would owe us that much less.

Q Is it fair to say that amounts of money reflected on these two invoices Government's 26 and 27, reflected monies the party owed to you -- obligations the party had incurred in the course of events?

A Yes sir, yes sir.

Q And you credited Mr. Flack's checks against the party's obligations?

A Yes sir.

Q Is that a fair statement?

A Yes sir.

Q You had occasion to tell Mr. Christenfeld that you received payments?

A Yes sir.

MR. MARCUS: At this time I would ask that the Jury be permitted to look at the two invoices, Government's Exhibits 26 and 27 and the checks.

THE COURT: Yes, pass them around.

(Exhibits passed to jurors.)

Q By the way Mr. Flack, did you ever have occasion to discuss - -

A I'm Mr. Paznick.

Q Excuse me.

Did you ever have occasion to discuss party printing bills on another occasion with Mr. Christenfeld?

MR. GILLEN: Objection.

THE COURT: Are these different bills?

MR. MARCUS: Yes, your Honor.

THE COURT: Come to the side bar.

(Discussion at sidebar as follows:)

MR. MARCUS: It is only one count, count 8.

THE COURT: Are there similar crimes?

MR. KAPLAN: We are offering them as similar crimes and intend to prove it as part of the same similar common scheme or plan.

MR. MARCUS: You will note the date, 3/26/69 which is contemperaneous with all the events raised in the indictment and the testimony adduced.

The name of the recepient in the particular document is a different one.

However, again, it is the same scheme and method --

THE COURT: Mr. Gillen saw them?

MR. KAPLAN: Yes. He has even seen the contracts they got from the County.

MR. GILLEN: You don't even let me agree.

I would object to any evidence of this sort whatsoever.

If the Government had it it would have been carried in the indictment. This preceeds or is subsequent -- I think the bills are '68 and this is '69.

MR. MARCUS: The dates correspond to the dates Mr. Flack actually made payments.

MR. GILLEN: We are talking about the initial conversations. I will move at the proper time with regard to the statute of limitations involved in count 8.

However, I would submit, most respectfully,

that this is not, your Honor, probative of any of the elements of the crime charged in count 8.

THE COURT: Well, it's a similar plan and under the Deaton Principle which really has been adopted, I think, in the Rules of Evidence, I think it is admissible.

MR. GILLEN: Except this -- is it a similar plan or to take it off his taxes?

We are dealing with taxes, not someone who paid another person's bills.

MR. KAPLAN: We are going to show the same procedure was used in connection with everything.

THE COURT: As long as it's not used to just show that character.

MR. GILLEN: If you just let me finish my argument, sir.

Is it the Government's intention to prove another count not alleged in the indictment? If so, then not through Mr. Paznick.

If they have alleged evidence -- and I would object there -- if it was admissible, it would be relative to Jackson and Rogers, whoever they are.

THE COURT: They can start with Mr. Paznick and I think there can be an inference that if you send

a party printing bill to a corporation --

MR. GILLEN: I submit that doesn't necessarily follow.

THE COURT: Not necessarily. It is an inference they may or may not prove.

Objection overruled.

(Conclusion of sidebar discussion.)

(The following held in open court.)

MR. MARCUS: May we have the reporter read back the last question?

(Record read by reporter as follows:)

"Q Did you ever have occasion to discuss party printing bills on another occasion with Mr. Christenfeld?"

A Yes sir.

Q Do you recall when this other conversation took place, the date?

A There were continuous conversations with Mr. Christenfeld as to the money they owed us.

MR. MARCUS: I'd like to have this document marked for identification, please.

COURT CLERK: One-page document marked Government 33 for identification.

(So marked.)

Q I show you, Mr. Paznick, what has been marked for identification as Government's Exhibit 33 and ask you if that refreshes your recollection as to a specific conversation that you had with Mr. Christenfeld.

A Yes sir.

Q Do you recall when that conversation took place?

A March of '69.

Q Do you recall what Mr. Christenfeld said to you on that occasion and what you said to him in words or substance?

A When I asked for additional onies due me I was given this one name to send the bill to in the amount of approximately $1500.

Q What name were you given?

A Jackson & Rogers Appraisals, Inc.

Q What address?

A 1527 Franklin Avenue, Mineola, New York.

Q How much were you told to bill Jackson & Rogers?

A Approximately $15,000.

Q That was by Mr. Christenfeld?

A Yes.

Q By the way, had you ever done any work for Jackson & Rogers prior to this point?

A No sir.

Q Did you ever hear of Jackson & Rogers?

A No sir.

Q Ever meet Mr. Jackson or Mr. Rogers at any time prior to this conversation?

A No sir.

Q Did you ever have occasion to do any printing work for Jackson & Rogers after this conversation?

A No sir.

Q This bill, this invoice, was it made and maintained in the ordinary course of business by you -- this method of keeping invoices?

A No sir.

Q Well, how was this bill actually compiled, if you know?

A Yes.

The bill was typed out and a duplicate was made for myself just so that I know who it was sent to. It wasn't entered in my regular course of business --

Q I understand that.

I am referring simply to the practice of typing out the invoices.

You had occasion from time to time to type out invoices?

A Yes.

Q And this is a similar kind of invoice as was typed out?

A Yes.

MR. MARCUS: At this point, your Honor, I offer this document into evidence.

MR. GILLEN: I object on the grounds previously stated.

THE COURT: I overruled those objections.

It is a business record and the witness testified it is something he prepared.

COURT CLERK: Government Exhibit 33 received in evidence.

(So marked.)

(Cont'd on next page.)

DIRECT EXAMINATION

BY MR. MARCUS (Continuing):

Q With respect to the description here it says, below the name Jackson & Rogers Appraisals, Inc., 1527 Franklin Avenue, Mineola, New York -- and the date the invoice was mailed, 3/26/69 -- you will notice there is a description here.

It says, 31,000 brochures, offset, 11 by 17, two sides, two colors, 60 pounds offset stock.

Did that particular description correspond to any particular job that was given to you on this particular date by the Nassau Democratic County Committee?

A No sir.

Q How did you make up that description?

A Knowing my business I took a similar description that I had previously made out for a job done for the Nassau Democratic Club and I typed it out accordingly.

Q But the description doesn't correspond to any particular job actually given to you by the Democratic Party, does it?

A No sir.

Q Did you ever actually mail this particular bill to Jackson & Rogers at 1527 Franklin Avenue?

A I mailed the original, yes.

Q This is a carbon copy?

A That's a carbon copy, yes.

Q At any time during this period of time up to the present date did you have occasion to do any work at all for Mr. Jackson, Mr. Rogers or Jackson & Rogers Appraisals, Inc.?

A No sir.

Q Were you ever paid in connection with this by Mr. Jackson or Mr. Rogers or Jackson & Rogers?

A No sir.

Q Did you ever contact Jackson and Rogers personally when you were not paid?

A No sir.

Q Did you ever have occasion to tell Mr. Christenfeld that you had not been paid by Jackson and Rogers?

A Yes sir.

Q What did you tell Mr. Christenfeld?

A I must have told him that I did not get paid for one of the bills that he asked me to send out.

Q Did Mr. Christenfeld ever have occasion to tell you or explain to you how it came about that Jackson and Rogers would pick up a printing bill for the Party or how it is that Peter Flack Consulting Engineer would pick

MR. MARCUS: Any objection to this one?

MR. GILLEN: I don't know.

(Said document handed to Mr. Gillen.)

MR. GILLEN: I have no objection to the document, your Honor.

I do object to the whole line of questioning.

MR. MARCUS: I would offer this in evidence, your Honor.

THE CLERK: Document marked Government's 37 in Evidence.

THE COURT: No objection, I will receive it.

(So marked.)

BY MR. MARCUS:

Q I show you Government 37 in Evidence and ask you if this refreshes your recollection as to the exact date when you received this subsequent job.

(Handing to witness.)

A Yes, sir, it does.

Q What was that date?

A It is dated the 20th of February, 1969.

Q In connection with that particular contract, were you performing work on seven assignments, seven different

assignments?

A I believe eight. There's eight in the contract. However, several were withdrawn during the period.

Q Did you actually perform work, real estate appraisal work on behalf of the County in connection with these?

A Yes, sir, I did. I prepared appraisal reports and testified in Court relating to these matters.

Q Do you recall roughly over what period of time you performed work in connection with this contract?

A Almost a year.

Q Mr. Jackson, did there come a time in 1969, when you received a phone call from a political leader or his office?

A Yes.

Q Who was that political leader?

A Mr. Christenfeld.

Q Did you know what position he held?

A Yes, I did.

Q What was that?

A He was the chairman of the County Democratic Party.

Q Do you recall the substance of the phone call?

A Yes, he asked me would I drop in and visit with him at headquarters.

Q Did you have occasion to meet Mr. Christenfeld at party headquarters?

A Yes, I met him that day, that morning.

Q Do you recall, by the way, where Democratic Party headquarters was located?

A Yes. It's on Mineola Boulevard which is an extension of Franklin Avenue, the same block that my office is on.

Q Had you ever met Mr. Christenfeld prior to this appointment?

A No, sir.

Q Do you recall when, roughly, the meeting took place?

A I just think it was in the morning.

Q The time of the year, was it in the middle of 1969, roughly, the end of the year?

A It was in the late fall, I would think.

Q Did you actually meet Mr. Christenfeld?

A Yes, I did.

Q Where?

A At the headquarters building on Mineola Boulevard.

Q Do you recall any specific room or office where you met him?

A Yes, I met him -- I went in. There was a secretary or receptionist.

I told her who I was. She said I was expected and I went into Mr. Christenfeld's office.

Q Was anyone else present in Mr. Christenfeld's office at that time?

A No, sir.

Q What did Mr. Christenfeld say to you at the time?

What did you say to him as the best you can recall?

A He said to me that I had received contracts from the County to do appraisal work.

Q Did he indicate that he knew you were doing for Nassau County?

A Yes.

Q What else was said?

A He said that he expected me to contribute 10 per cent of my fees to the party.

Q When you say "10 per cent of the fees," is that in reference to the contractual work you had obtained for doing work for the Nassau County attorney's office?

A Yes.

Q When you say he asked you for 10 per cent of the fees, what was the tenor -- the tone in which he made those statements to you?

A Well, I got the impression that if I didn't, I wouldn't get any more work.

Q What was your response, if any, to Mr. Christenfeld?

A Do you want me to use the exact wording?

Q To the extent you recall the exact words, please.

A I told him to "Go fuck" himself.

Q What happened after that?

A I turned around and I walked out.

Q After you made this particular statement to Mr. Christenfeld, did you ever have occasion to receive any further real estate appraisal work from Nassau County?

A No, I did not.

Q Mr. Jackson, I showyou what has been introduced into evidence as Government Exhibit 33 and ask you if you've ever seen this particular bill before, a bill from Brooklyn Lettering Service, Inc., made out to Jackson & Rogers, Appraislas, Inc., the amount of $1,544.

Have you ever seen that bill before?

(Handing.)

A I only saw it in your office a couple of weeks ago. I never recall ever receiving it, no.

Q Did you have occasion to search your books and records to make a determination -- an investigation as to whether you had ever received that bill?

A Yes, I searched them and have no record of having made any payments.

Q Have you had occasion to investigate whether mr. Roggers ever received or paid that bill?

A Yes, we investigated our books together with the accountant.

Q What was the result of that investigation?

A Well, we have no record of ever doing business with these people and certainly no bill and we made no payments.

Q Have you ever heard of the Brooklyn Lettering Service Corporation prior to the time you were shown that bill by the United States attorney's office?

A No, sir.

Q Did you ever hear of the president of the company, Samuel Paznick?

A No, I don't know who he is.

Q Did you ever have occasion to hire the Brooklyn Lettering Service to do any printing services

for you?

A No, sir.

Q Did you ever agree to pay any part of the bills?

A No.

Q Did you ever agree to kick back 10 per cent of your fees to Mr. Christenfeld or to the Nassau Democratic County Committee?

A Absolutely not.

Q Did you ever have occasion to make any contributions to the Democratic Party in connection with this particular matter?

A No, sir.

Q At the time you met Mr. Christenfeld at party headquarters, had the conversation you just described, what fees had you received from the County at that point?

A I was paid on the Arma Bosch contract $1,500.

MR. MARCUS: I have no further questions.

MR. GILLEN: No questions.

THE COURT: You're excused.

(Witness excused.)

THE COURT: Let me see counsel in the Gallini case.

(Recess taken.)

THE COURT: Mr. Kaplan, have you anything more?

MR. KAPLAN: That your Honor take judicial notice of the New York State Election Law.

THE COURT: You'll have to give me the particular sections you're referring to.

MR. KAPLAN: At some later time or now?

THE COURT: No, you can give them to me later.

MR. KAPLAN: The United States of America rests its case against Marvin Christenfeld.

THE COURT: We'll take a short recess. Don't talk about the case. Don't be deceived by the clocks in the building, as we're on Daylight Savings Time.

You're excused.

(Jury leaves courtroom.)

THE COURT: Mr. Kaplan, there's one thing. I went through these notes on Green. I don't think they constitute a verbatim statement and I've ruled that they're not proved or adopted by him, but there's one thing that may have some bearing. You say here, "Cash kept in safe-deposit box in bank, Mellon Bank. Stuart kept it in filing cabinet." We have it underlined with entrance and exit, which seems to mean you have some access reports from Mellon Bank; is that correct?

MR. KAPLAN: Yes, we subsequently determined that first of all, from Friedman and Green, that they

really only used, went to the bank to put in the big payment or take out the big payment. Most of the payment was taken, as the testimony indicates, from their own drawer or from their filing cabinet.

THE COURT: I thought maybe that was something partly inconsistent with their testimony that Mr. Gillen would have a right to, if he wanted to --

MR. GILLEN: That's the problem. If I knew of these things, I would explore these things. I really can't say what's inconsistent or what's not, not knowing what went on. That's my whole point. If I don't know, I can't explore.

MR. KAPLAN: That was in evidence that they had something in the safe-deposit box, but he also said he had no recollection as to when he went to the safe-deposit box and he also drew checks against it and also got money from Friedman and it was kept in his drawer, also in a filing cabinet. There's no indication that at any time that we can pin down what happened. I think that it's superfluous. That's the only evidence --

THE COURT: I should make it known to Mr. Gillen.

MR. GILLEN: What Mr. Kaplan thinks, what he think would help him, and what the defense attorney thinks would help the defense, are two different things.

I respectfully submit this is the type of thing I'm talking about, probe and explore.

Who knows what type of answers we'll get from Mr. Green and Mr. Friedman. That's the whole purpose of cross-examination, not to take at face value what these people say, but to probe it on cross.

MR. KAPLAN: He could have probed it on cross. It was in evidence.

MR. GILLEN: I'm talking about the notes and prior statements. If I don't know, I don't know. That's it. I've been foreclosed from knowing.

Your Honor, what about the testimony of Mr. Solomon?

THE COURT: Let's get your motion first. This is defense case.

MR. GILLEN: All right.

Your Honor, at this time I most respectfully move to strike the testimony of the last witness, Mr. Jackson, together with the testimony of Mr. Paznick referring to any which refers to the alleged prior similar act of the bill.

Would your Honor want me to make my motions at seriatim and then rule on them?

THE COURT: Yes. I would suppose -- I ruled on the prior similar acts already.

MR. GILLEN: Just a motion to strike all that testimony.

THE COURT: Yes, motion denied.

MR. GILLEN: At this time, your Honor, as to Count One of the indictment, I would most respectfully move that the Government, in the first instance, be directed to elect which theory of the extortion they are proceeding on. Are they proceeding on fear of economic loss or are they proceeding on color of official right?

THE COURT: Why can't they proceed on them both?

MR. GILLEN: I most respectfully submit, your Honor, there is no evidence here of this alleged color of official right. There is evidence by Mr. Green, if believed, that could possibly support some theory of fear of economic loss. I most respectfully submit that there is no evidence in the case taking into account Mr. Green's entire testimony and that is the testimony on which the extortion count is based of color of official right.

Mr. Green has testified; to wit: "Stick 'em up." He hasn't testified as to any fear whatsoever of official actions. He's testified -- if he's believed, that is an absolute shakedown.

THE COURT: I don't know what study you've given to the request to charge, but one other request is the issue would be decided is not whether the defendant actually had the power to grant or withhold personal service contracts, but whether it was reasonable for Green to believe, based on his public position in Nassau County.

MR. GILLEN: That's true. I'm not denying that is the law and that can be interpreted as the law.

What I'm saying, the facts of this case, Mr. Green's testimony, if believed, forecloses any fear of public officals or color of official right. He testifies to an actual -- you know, pay or die situation, you know, "Pay or else." There is no other interpretation.

THE COURT: Does the Government want to say anything on that?

MR. MARCUS: Your Honor, I think the evidence is clear both from Mr. Green, Mr. Friedman and others that the Government has called that they reasonably perceived the defendant, Mr. Christenfeld, who held two public positions at the time, Chairman of the Party and Commissioner of the Board of Elections. In addition to making a statement to Mr. Green that in fact Mr. Green wanted two contracts "which they,"

or "we had to give out," I think was the exact words that were used. He would have to pay $44,000. I think under the case law that's more than ample to support sending this matter to the jury, both on the theory of fear of economic loss and under color of official right.

I also think the case law is abundantly clear. The Government can submit its case of extortion on both the theory of economic loss and color of official right at the same time.

THE COURT: I think they can do it. I'll deny their motion.

MR. GILLEN: Respectfully except.

At this time I most respectfully move to strike all references in the testimony from alleged demand and payment of $44,000 as being at variance with the indictment which alleges approximatley "40,000."

THE COURT: I presume you're speaking seriously, but I can't give it any weight. I'll deny that motion.

MR. GILLEN: Respectfully except, your Honor.

Your Honor, at this time as to Count One of the indictment, I most respectfully move for a directed verdict of acquittal on the grounds that the Government has not adduced evidence which would fairly support a charge of extortion on the whole case.

THE COURT: Motion denied.

MR. GILLEN: Respectfully except.

As to Count Two of the indictment I most respectfully move at this time for a directed verdict of acquittal on the grounds that the Government has not adduced sufficient proof that would support a verdict of guilty beyond a reasonable doubt on this particular charge, to wit, the travel act. There's no evidence here that I can recall specifically where Mr. Christenfeld demands that Mr. Green travel in interstate commerce. In fact, I think the evidence is to the contrary that Mr. Green has interest throughout, at least, the Eastern Seaboard, perhaps other places, and that he regularly travels throughout -- he regularly travels.

(Continued on next page.)

MR. MARCUS: In the first place, I point out that the charge is that Mr. Christenfeld caused Samuel Green to travel in interstate commerce, knowingly and willfully. I think the evidence here is that Mr. Green, after the initial extortion demand in the fall of 1969, came up to New York to meet with Mr. Christenfeld on at least four occasions, when he made cash payments to him. I think that is ample evidence to say Mr. Christenfeld caused him to come up.

In addition, Mr. Green testified that he spoke to Mr. Christenfeld on the telephone on a number of occasions from Sewickley, Pennsylvania, to New York. Specifically, he testified in March of 1970, I believe it was March 3rd, he received a call from Mr. Christenfeld, from New York, when he was in Pennsylvania, and at that time Mr. Christenfeld asked him to place Pelz on the payroll, gave him the amount of money, $500, to place him on the payroll, and in addition gave Mr. Green the address of Mr. Pelz, and thereafter on the basis of that information Mr. Green proceeded to have his corporation forward checks to New York by mail.

I think the evidence amply supports the interstate connection.

THE COURT: Mr. Gillen, in Request No. 9 the

Government says it is not necessary for the purpose of extortion to affect interstate commerce, merely requires that it did in some way obstruct, delay or affect commerce.

MR. GILLEN: That question of commerce is really quite a sophisticated one. What happens in these cases, these are actually state crimes in the first instance, but the Government through that act of Congress -- through the device it affects interstate commerce -- the Government says now the Federal Government has jurisdiction, which is contrary to the theory of state rights, etc., etc.

THE COURT: I have not heard of a state protesting the interstate commerce as a jurisdictional factor.

MR. GILLEN: That is precisely what I am getting at. It is a jurisdictional prerequisite for the Government to intrude into state crimes. They must prove it beyond a reasonable doubt and they need more than some scintilla of connection between interstate commerce and the facts adduced in this case.

Again, it is a way of fragmenting the innumerable counts into an indictment. I submit in this instance the Government has not shown the jurisdictional prerequisite to satisfy this count and I make that

argument also as to the first count. 893

THE COURT: It is a question for the jury, whether it is beyond a reasonable doubt. I will deny that motion.

MR. GILLEN: Respectfully except.

As to count three, most respectfully, I move at this time for a directed verdict of acquittal on the grounds that the Government has not adduced sufficient facts to prove beyond a reasonable doubt any conspiracy so far as the payments to Mr. Pelz were concerned. We do have some evidence of an initial conversation about Mr. Pelz being put on a payroll and then we have evidence over a period of time that Mr. Pelz did receive $500 per month, except in one instance we have no explanation where he got $400 over a period of time. This whole period of time, according to the Government's own witness, there was no conversation with Mr. Christenfeld until the whole thing was over, and I think Mr. Pelz said, "I told Mr. Christenfeld it is over. Oh, I'm surprised that thing was going on."

In addition thereto, from the evidence adduced from Mr. Green on cross-examination there was no running account of any kind whatsoever allegedly kept as between he and Mr. Christenfeld. No

discussion, X, X, X, all the way down the line. There is something about some records that we do not have and that was destroyed.

I submit that this is fragmenting of counts based upon the same set of facts. I think we have four or five in this indictment based on the same set of facts. We have the extortion count in one, the travel act in the other, two conspiracy counts, and a substantive count, where I think I made this argument once before. I just repeat it by reference to the prior pretrial argument, that we have a coming together, a breaking apart, and an attempt to put it back together again.

Frankly, I most respectfully submit there is no evidence of conspiracy here and if there wasn't evidence of a conspiracy here, we'd have a conspiracy to extort, which we do not have. I think the Government, by drafting the indictment, recognized the lack of a conspiracy here.

THE COURT: A conspiracy to extort means that Mr. Christenfeld has to be conspiring with John English, which has not bee charged, but a conspiracy to defeat the income tax as one between Mr. Christenfeld and Mr. Green.

I think you can argue on the subject, but

there is evidence to indicate that on the basis of Mr. Green's testimony, Mr. Christenfeld was telling him how he could deduct political contributions and get a tax reduction for them.

I will deny that motion also.

MR. GILLEN: Respectfully except.

As to count four, I think this is the other conspiracy. I would make the same argument that I made on count three with the addendum, to make the further argument to accept Mr. Green's testimony that he needed Mr. Christenfeld to tell him how to cheat on taxes is incredible and unbelievable. He did not need anyone to tell him how to cheat.

THE COURT: Whether he needed him or not, there was evidence that it was something that they talked about and I will deny that.

MR. GILLEN: As to count five, I make the same motion as under Rule 29 for a finding of not guilty and I renew my motions heretofore made before trial as to the fragmenting of these counts. Here we have a substantive count of aiding and abetting, while we already have two separate conspiracies. I most respectfully submit to the Court that this causes me a great deal of confusion to have two conspiracies that manifest themselves later in one

substantive act or one substantive count. I most respectfully submit that the Government, who are the ones that drafted this indictment, have done so in such a fashion as to make it impossible to defend against.

Again, the two conspiracies culminating in one substantive act, a substantive crime, aiding and abetting, which of course I can't say it would be one act. All I am saying, one has to be duplicity and the other one multiplicity, or one or the other.

THE COURT: They could have fragmented this more, because they have one offense in 1970 and '71.

I may be inclined to tell the jury the fact that they convict on every count does not mean that there will be consecutive sentences. You have a lot of nonsense in the papers where they state that one faces sixty-one years on eleven counts. I think the Government has really an option, where some assistants put in more counts than others. If they put them in, there is no requirement of dismissal --

MR. GILLEN: My real argument is that it be duplicity or multiplicity.

THE COURT: I passed on that before. I deny it.

MR. KAPLAN: Do you have the "S" indictment

in front of you, because the superseding indictment has only one year, 1970.

MR. MARCUS: That is in count five.

MR. GILLEN: As to count six it charges again a conspiracy. I respectfully submit that the Government has not adduced evidence sufficient to raise their proof to that required by the rules, that it must be proved beyond a reasonable doubt.

THE COURT: It could be stronger. I will deny the motion, however.

MR. GILLEN: Respectfully except.

As to count seven, I make the same motion under Rule 29, to dismiss -- for a directed verdict of acquittal on the grounds that the Government as not adduced proof beyond a reasonable doubt that would support a finding of guilty in the event the jury did so find.

THE COURT: I think they are in the same category. Motion denied.

MR. GILLEN: Respectfully except.

As to count eight, my recollection is, and I think the record will bear me out, that the alleged aiding, abetting, counseling and commanding as to Mr. Christenfeld took place sometime in 1968. I think it was the latter part of 1968 -- either

sometime in September of 1968 or October, or perhaps in December of 1968. I do not recall. My argument in the first instance is that of the statute of limitations. Whatwe have here charged is a censorial conduct by Mr Christenfeld where he is an accessory to Mr. Flack who filed a tax return in 1970, some eighteen months after the alleged conversation with Mr. Christenfeld, with no testimony whatever of any intervening acts on the part of Mr. Christenfeld.

(Continued on next page.)

1 MR. GILLEN: (continuing) I must respectfully
3am2 2 submit that the statute of limitations, as t' Mr. Chris-
3 tenfeld, would bar this particular prosecution. I do
4 know what the Government will argue, that the return was
5 filed in April of 1970, based upon the calendar year
6 1969.
7 Now, my recollection of the exhibits, there were
8 two bills, I believe, allegedly sent at Mr. Christen-
9 feld's request by Mr. Paznick bearing the dates 1968.
10 Now, if there were some plan, to defraud the
11 Government in a false statement, that plan took place
12 in the year 1968. For whatever reasons, Mr. Flack pays
13 these bills, I believe, by four checks which cover the
14 year 1969. I must respectfully submit that that does
15 not save this from the operation of the statute of
16 limitations. We do not even have here any evidence
17 whatsoever that in the interim period of time, from
18 the initial conversation in 1968 and the alleged con-
19 versation with Mr. Paznick which caused the bills to
20 be prepared and sent to Mr. Flack, we don't have a
21 scintilla of any alleged conversation by Mr. Christen-
22 feld after that particular moment, and I most respect-
23 fully submit that particular count must be dismissed
24 based upon the statute of limitations.
25 THE COURT: When was the aiding and abetting?

MR. MARCUS: I think it is well settled under Federal law that the period commences from the due date of the filing date of the tax return.

THE COURT: On an aiding and abetting case?

MR. MARCUS: In Butzman v. the U.S., cited as 205 Ep. second 243, a Sixth Circuit case, almost directly in point factually, where the act of the defendant in aiding and abetting the filing of a fraudulant internal revenue document was completed, I believe, on December 31, 1945. The indictment was not filed until Janury 10, 1952, more than six years later. Since the fraudulant document was not filed until Janury 14th of 1945, the Court held that no crime was committed by the defendant until the document was actually filed. I think the case here is clear even though aiding and abetting may have taken place without the statute, the case itself isn't consummated until the returns are due and actually filed. I think the Supreme Court of the United States has made it clear in a recent case, United States vs. Habick, I believe, cited at 390 U.S. 222, that the offense of aiding and abetting in fraudulant tax returns in violation of 26 United States code 7206, cannot be consummated until the date of the filing, which is the due date of the return, April 15th, and in Hobick, in dictum, the Court asserted that even

if a taxpayer anticipates an April 15th filing date, by filing on January 15th, the limitations period would commence on April 15th. I think the Court pointed out in that case that the Federal Government must be permitted the administrative assistance of a uniform date for taxpayers in connection with the statute of limitations. So, I think, the tax case is clear, that the crime is not consummated until the returns are filed or the due date, and that is April of 1970, when Flack actually filed the return.

In addition, I would state that Mr. Gillen is erroneous insofar as he states as a matter of fact the only involvement of Christenfeld with Flack was the initial conversation in the fall of 1968. There was testimony from Samuel Paznick, the president of the Brooklyn Letter Service, that he had conversations with Christenfeld about getting paid or getting pay throughout the period of 1969. In fact, the testimony of Mr. Flack covered the entire period of time. Mr. Paznick indicated that he discussed this matter with Christenfeld when the payments came in from Mr. Flack. Strictly as a matter of fact there is evidence that the whole transaction continued at least until 1969 -- until the last payment is made by Mr. Flack.

THE COURT: The Butzman case is a little differ-

ent , because the aider and abettor there was the controller who had had something to do with the filing of the application.

MR. MARCUS: The fact remains that the aiding and abetting was the filing of a fraudulant return. The Court indicated that the statute of limitations does not start to run until the crime is committed --

THE COURT: No crime would have been committed by the aider and abettor if the application had not been filed. Mr. Christenfeld might have been taken off the hook if Mr. Green had not filed the kind of return -- Mr. Flack he did.

MR. GILLEN: Except for this:

While we have here, again arguendo, if such a thing occurred the contemplation of the parties was that this bill was due and payable in 1968. Therefore, the return should have been filed on April 15, 1969. It was Mr. Flack, for whatever reasons, did not take this off until the 1969 calendar year for the return April 15, 1970. Whether Mr. Flack by his choice had a better year one year or the other, I do not know. We are not dealing with the Pinkerton case, we are not dealing with a conspiracy. We are dealing with aiding and abetting.

MR. MARCUS: The two particular incidents from the Brooklyn Letter Service were September of '68 and

the last one was December of 1969, almost at the end of the year. The conversation that Mr. Flack testified to that he actually had with Mr. Christenfeld that when he met Christenfeld, Christenfeld asked him for roughly $10,000. At that time he indicated that he had a cash flow problem and together they worked out another method to which the payment to the party would be made. I suggest that it was clear from the conversation that they had, certainly clear to Mr. Christenfeld if the testimony of Flack is believed and the testimony of the other businessmen, the payments weren't going to be made because he had a cash flow problem and indeed he would make them over a longer period of time, and when you add to that the payments were made throughout the period of 1969 and Mr. Christenfeld knew it because Paznick told him that throughout '69, I think it is clear that the defendant must have known that the tax returns couldn't have been filed for the year 1968.

I think as a matter of law, even if that wasn't the case, there's no crime until the returns are filed and the case law, I suggest under the cases I cited, United States v. Hobick and the Supreme Court case just cited in 1968, where the court noted the Federal Government must be permitted the administrative convenience of uniform filing date.

THE COURT: It is a little different situation.

MR. GILLEN: I do not argue with the uniform filing date. All I say is this: We are not dealing with a conspiracy where the Pinkerton rule comes into effect. I assume anyone is liable for the things that he puts in motion that he can reasonably foresee. We have a situation here in 1968 where Mr. Flack says his cash flow was bad. I think he means there, and I figure with evidence, cash-cash and not cash-check. We have the situation, I think, your Honor might be familiar with where a businessman at the end of the year -- I will use the example where a doctor wants to send a bill to a man -- where he sent a bill to a man -- where the man says to the doctor "Will you please bill me?" and where the doctor says "I won't bill you because I don't want the income for this year." While the man wants the deduction for the year.

I have heard of instances where people have tried to avoid having people pay them a bill because once you get that money you have to declare it. If you do not pay it prior to the 31st, you do not get it as a deduction.

This deal here is a crime by Christenfeld. It occurred in 1968 and not thereafter.

THE COURT: I think you are not entirely logi-

cal because the aiding and abetting is committing a crime, though the crime was not committed until 1970, when the return was filed.

MR. GILLEN: Except for this: If you are aiding and abetting another in 1968, you are aiding and abetting for the 1969 year, and not the '70 year. Let us assume Mr. Flack for some reason didn't file until 1975. Is someone still liable for aiding and abetting for something that might have happened back in 1940?

THE COURT: The assumption that this would all be paid in 1968 is one that you cannot really require the Court to adopt. I will deny the motion.

MR. GILLEN: Respectfully except. I further move as to count 8 for a directed verdict of acquittal based upon the fact that the Government in this case has not adduced proofs sufficient to satisfy the burden of beyond a reasonable doubt for the jury to find a verdict of guilty.

THE COURT: Motion denied.

MR. GILLEN: Respectfully except.

THE COURT: Are you ready with your testimony?

MR. GILLEN: I said the other day I wouldn't be ready until 2 o'clock. I would like to get straight on this business which will take some time. I have all the lines and pages marked off.

THE COURT: Let me excuse the jury until 2 o'clock then.

MR. KAPLAN: With respect to the judicial notice, I have certain sections to read:

New York State Election Law, article 2, sections 11 through 18.

Article 3, sections 30, 31, and 51.

Article 13, sections 320 through 324 inclusive and 326.

THE COURT: All right.

MR. GILLEN: I would object to anything on the Election Law because I must respectfully submit we are in a Federal Court here and the Election Law has nothing to do with these charges whatsoever.

THE COURT: We will get to that one when we get to the request to charge.

MR. GILLEN: Yes, your Honor.

THE COURT: Bring in the jury, please.

(continued next page)

CHARGE OF COURT

THE COURT: Gentlemen at the counsel table, Mrs. Wallace, and Ladies and Gentlemen of the jury. You heard the partisans present their argument with respect to the facts, it is my job to tell you the rules of law that you are to follow and I will also give you something of the way to evaluate evidence and the methods that you should follow in trying to reach a verdict.

It is your duty as jurors to follow the law as I give it in my instructions. You can't disregard it just because it is anything you don't like. You apply the rules of law to the facts are you find them. You are the sole judges of the facts. You are to perform your duty without bias or prejudice for or against any parties.

The law doesn't permit jurors to be governed by prejudice or public opinion or sympathy. It is one of the difficult problems of a judge when a man is convicted it frequently hurts his family as well as the man. The judge of the law or judge of the facts can't be troubled by that, we have to call the case as we see the facts and as I see the law.

The law presumes that the defendant is innocent of crime. Mr. Christenfeld starts with a

clean slate before the testimony is in. And the law permits nothing but legal evidence to be presented before the jury to be considered in support of the charges that have been made. The presumption of innocence is enough in and of itself to acquit a defendant unless the jury is satisfied beyond a reasonable doubt of his guilt on a particular count from all the evidence in the case.

I will say just a few words of what the law means by a reasonable doubt. First you'll look at the word, reasonable doubt is a fair doubt based on reason and common sense. It may arise from the state of the evidence or may arise from the absence of the evidence on an essential point. A reasonable doubt doesn't mean a doubt that a juror asserts arbitrarily to avoid an unpleasant task. It doesn't mean beyond a possible doubt because rarely can anything be proved to an absolute certainty and the law doesn't require this.

One frequent judicial definition of reasonable doubt is it is the kind of doubt that would make you hesitate to act in your own important affairs.

This rule of proof beyond a reasonable doubt operates on the whole case. It doesn't mean that

each bit of evidence must be proved beyond a reasonable doubt. You must put together all the evidence in the case, direct, cross-examination, redirect, government evidence, defendant's evidence, and the sum total of the evidence must satisfy you be nd a reasonable doubt as to each element of the crime charged or else you must acquit.

If you have a reasonable doubt you bring a finding of not guilty. If you are left without a reasonable doubt you bring in a finding of guilty.

Finding a man to be guilty of a felony and subjecting him to a criminal punishment is serious. You consider this fact in deciding whether you have a reasonable doubt.

If you are convinced beyond a reasonable doubt, of a defendant's guilt you must find him guilty and not be swayed by sympathy.

An indictment, as I said at the beginning, is just a formal method of accusing the defendant of a crime. It is not evidence of any kind against the accused. The fact that a grand jury returned the indictment doesn't create any presumption or permit any inference of guilt. The defendant has pleaded not guilty and the indictment and the plea create

the issues which you must decide.

As I said at the beginning, the law never imposes a duty on a defendant in a criminal case to testify or even to produce any evidence. He can simply say, you haven't proved it.

The fact that Mr. Christenfeld didn't testify does not justify any inference with respect to any of the facts and is not anything that you should talk about when you are in the jury room.

Decide the case simply on the evidence that is here and the government's obligation to prove beyond a reasonable doubt. And the fact that he is designated a defendant doesn't have any real significance in the case. It doesn't mean he has to defend. He can still say the government is the one attacking me, they have to establish my guilt beyond a reasonable doubt and overcome the presumption of innocence.

The indictment in this case is in eight counts which form more or less three categories. The first two having to do with what is called extortion and three counts charging conspiracy to defraud the United States with relation to income tax returns, and three counts charging aiding and abetting or advising in connection with false and fraudulent

income tax returns.

The first count I will read to you. It is fairly long but you ought to hear it because it the charge.

It reads: "At all times relevant herein, Green Engineering Company, a corporation organized under the laws of the Commonwealth of Pennsylvania, was engaged in supplying engineering and consulting services in various states and it maintained branch offices and employees in various states. In 1968 two of the principal officers of Green Engineering Company organized a partnership, under the laws of the State of New York, known as Samuel J. Green Associates, to transact business for Green Engineering Company with Nassau County, as well as other entities in the public and private sector. Samuel J. Green Associates, which maintained offices in Hicksville, New York, functioned as a branch office of Green Engineering Company; its operating expenses were paid by Green Engineering Company; its employees were paid directly by Green Engineering Company; and its profits were absorbed by Green Engineering Company.

"Two, at all times relevant herein, Marvin D. Christenfeld, the defendant, was a Commissioner of

the Nassau County Board of Elections and Chairman of the Nassau Democratic County Committee. In both capacities he was clothed under the laws of the State of New York with various official powers and duties. Moreover, Marvin D. Christenfeld, the defendant, as Chairman of the Nassau Democratic County Committee, held himself out to, and was perceived by, Green Engineering Company and Samuel J. Green Associates as having the power to influence the award of contracts for consulting engineering services to be performed by the County of Nassau.

"Three, Marvin D. Christenfeld, the defendant, told Green Engineering Company, and Samuel J. Green Associates, and their officers and agents, that in order to obtain the award of certain consulting engineering contracts of the County of Nassau for the design of sewerage treatment facilities they would have to pay approximately $40,000 to Marvin D. Christenfeld, the defendant, and to the Nassau Democratic County Committee.

"Four, in or about and between September, 1969 and June, 1973, both dates being approximate and inclusive, Marvin D. Christenfeld, the defendant, knowingly, willfully and unlawfully did attempt to and

did obstruct, delay and affect commerce as that term is defined in Section 1951 (b)(3) of Title 18 of the United States Code, and the movement of materials, equipment, supplies and labor in interstate commerce by attempting to obtain and obtaining approximately $40,000 from Green Engineering Company, Samuel J. Green Associates, its officers and its agents, with the consent for such payment having been induced by the wrongful use of fear of economic loss and color of official right.

"Five, at the direction of Marvin D. Christenfeld, the defendant, payment of the aforesaid sum of approximately $40,000 was made in the following manner:

"A, Samuel J. Green, president of Green Engineering Company, personally delivered approximately $12,000 in United States currency to Marvin D. Christenfeld, the defendant, in or about and between 1969 and 1971, both dates being approximate and inclusive."

(continued next page)

"B, Green engineering Company made payments by check of approximately $17,500 to Harry Peltz, Jr., Esq., a law partner of the defendant, Marvin D. Cristenfeld, in or about and between March 1970 and February 1973, both dates being approximate and inclusive. Harry Peltz, Jr. did not perform any legal work for Green Engineering Company or Samuel J. Green Associates.

"C, Green Engineering Company made payments by check of approximately $6,000 to Olga Mrozack, personal secretary of the defendant, Marvin D. Cristenfeld, in or about and between July, 1970 and January, 1973, both dates being approximate and inclusive. Olga Mrozack did not perform any work for Green Engineering Company or Samuel J. Green Associates.

"D, Green Engineering Company and Samuel J. Green Associates, its officers and agents, made payments to the Nassau County Democratic Committee in the approximate amount of $5,000.

"Six, the aforesaid conduct of Marvin D. Cristenfeld, the defendant, had the potential of affecting commerce and did affect commerce, (a) because it depleted the assets of Green Engineering Company and Samuel J. Green Associates which were engaged in, dependent upon, and regularly used the facilities of interstate commerce, and (b)

because the performance of the consulting engineering contracts, which were awarded to Green Engineering Company and Samuel J. Green Associates as a consequence of the extortionate payments described in pargraphs four and five, necessitated the use of the facilities of interstate commerce, by Green Engineering Company and Samuel J. Green Associates, for the movement of materials and personnel between the Commonwealth of Pennsylvania and the State of New York."

Those are the allegations in Count One that the government must prove, the charges are made criminal, by Title 18, United States Code, Section 1951 which says: "Whoever in any way or degree obstructs, delays, or affects commerce or the movement of any article or commodity in commerce by robbery or extortion or attempts or conspires to do so shall be fined or imprisoned." I don't tell you the extent of fine or imprisonment because that's my responsibility if there is a conviction and I would hear a lot more facts than I've heard so far.

As used in this section, the term "extortion" means obtaining property from another with his consent induced by wrongful use of actual or threatened force, violence or fear or under color of official right and

the term "commerce" means, as between any point in a state and any point outside thereof which is essentially interstate commerce.

In order to establish a violation of Section 1951 the government must prove three, what I call essential elements of the crime.

First, that there was fear of economic loss or color of official right.

Second, that Mr. Cristenfeld obtained payments or benefits and,

Third, that the act affected interstate commerce.

I'll give you some more detail about these matters. The extortion is charged as involving wrongful use of fear of economic loss and color of official right, but a finding by you that the defendant employed either means is enough for you to find extortion. You don't have to find that both methods were employed.

Fear of economic loss is fear as that term is used in the section that I've read; payments don't have to be induced by interference with a pre-existing contract or threats to withhold payment for work already completed. A person has a right to do business or to solicit business from anyone, including governemnt departments free of any extortionate demand or free

of any requirement to make unlawful payments.

"Fear" means a state of anxious concern or alarm and concern over anticipated economic loss or adverse effect on a business would constitute fear as the term is used in the statute. So that if someone fears that he is unable to obtain a contract without paying off, that constitutes fear as described by this statute.

On the other hand, mere voluntary payment of money unaccompanied by any fear of economic loss whatsoever is not extortion. If you were to accept Mr. Gillen's interpretation that perhaps Mr. Green was just trying to ingratiate himself by making payments which were not solicited, that would not constitute extortion; however, the fact that the relations between some of the government witnesses and the defendant may have been cordial or friendly, at least on the surface, is not inconsistent with the finding of extortion by wrongful use of fear of economic loss. The critical point on this first element is whether you're convinced beyond a reasonable doubt that Mr. Christenfeld deliberately used Green's reasonable fear of economic loss to his engineering business in New York State in order to obtain money or other valuables from Green or his corporation. It is not necessary that Mr. Christenfeld

have used money for himself. If it's extorted for the benefit of his party or if it's extorted for the benefit of his secretary, that would constitute extortion within the statute.

With respect to color of official right, this is the wrongful taking by a public official of money which is not due to him or his office, whether or not the taking was accomplished by force or threats or the use of fear. When a public officer takes, or receives money that is not due him or his office, then the crime of extortion is committed. Wrongful use of public power or office to obtain payments not due to the official or his office is the essence of the crime of extortion under color of official right and it's not necessary to establish that Mr. Christenfeld actually was able to assure or guarantee the award of personal service contracts. The question is whether it was reasonable for Mr. Green to believe, based on Mr. Christenfeld's public position in Nassau County and the representations he made to Mr. Green that Mr. Christenfeld had that power.

You may have thought, as you heard this, that this is a little like bribery, paying somebody off. There is a little overlap between bribery and extortion, but the extortion and bribery are not mutually exclusive

crimes. The same set of facts might support a finding of extortion and bribery at the same time, but the essence of extortion is the wrongful use of public position or office or fear to obtain payments of money or other valuables which were not otherwise made.

For the obtaining of benefits, I think I mentioned that already. If you find that the defendant obtained money or obtained benefits for his employee or for political workers by reason of his official position without regard to whether it was a condition for the awarding of contracts, you can find that he obtained money or property on the color of official right. The use to which Mr. Cristenfeld put the money and other valuables allegedly paid by Green Engineering is not an issue, whether he kept it or spent it or gave it away is immaterial. Evenif he used it for a lawful purpose that would not be a defense for extortion if you're satisfied beyond a reasonable doubt that he obtained the money under color of official right. It wouldn't be a defense to the charge of extortion that the money was a political contribution as long as the defendant obtained it by extortion.

Insofar as the jobs are involved that were described in the indictment, the retainer of Mr. Pelz

and payment to Olga Mrozack, it's not unlawful for a public officer to recommend somebody for a job. If Mr. Cristenfeld was instrumental in procuring a bona fide job for individuals, that is not a violation of the law. The charge is extortion and the later counts conspiracy to defraud the government of tax payments and aiding and abetting false tax returns, but if you don't find that Mr. Cristenfeld was guilty of extortion, as I've defined it on the first count, then you can't find him guilty.

The third element is the effect on interstate commerce and the reason the case is in the Federal Court is because there was an effect on interstate commerce with respect to count one, the extortion count.

In order to find Mr. Cristenfeld guilty on the count one, you must be satisfied that he attempted to and did obstruct and delay interstate commerce in the movement of materials, equipment, supplies and labor by attempting to obtain or obtaining approximately $40,000 from Green Engineering and Samuel J. Green Associates with the consent which was induced either by fear of economic loss or by under color of official right. It's not necessary to find that Mr. Cristenfeld actually had a purpose to obstruct, delay or

effect interstate commerce. All that's necessary is that one of the natural effects of the extortion is an obstruction of the interstate commerce.

It's ordinarily reasonable to infer a person intends the natural and probable consequences of acts knowingly done and you can consider the extent to which the evidence indicates that he knew that Mr. Green came from Pittsburgh and the Green Company had people traveling back and forth in Pittsburgh from another state.

The amount of money that he has obtained by extortion or the manner in which it was obtained is not essential in determining whether there's an effect on interstate commerce. It's merely required to show that the extortion in some way or degree obstructed, delayed, or affected commerce. Even if the Green Engineering Company continued to make money, if it had to pay money that was not lawfully due from it, that would constitute an interference with interstate commerce within the meaning of the statute.

You've heard discussion about particular amounts and I'll just tell you this: it's not necessary for the United States to prove the exact amounts alleged in the indictment. The amounts and dates can be approximate as long as the indictment has given the defendant reasonab

notice of what he has to defend against, so that he can come in and cross-examine properly and prove his case. It is sufficient if the evidence in the case establishes beyond a reasonable doubt that any substantial amount was extorted from the corporations or partnerships mentioned in the indictment.

I've mentioned three elements; fear of economic loss or color of official right, obtaining payments or benefits and affecting interstate commerce and each of those elements must be proved beyond a reasonable doubt by the government. You can't assume one from the existence of the other.

The second count is somewhat allied to this. Count two says that "in or about and between September, 1969 and June, 1973, both dates being approximate and inclusive, Marvin D. Christenfeld, the defendant, did knowingly, willfully and unlawfully cause Samuel J. Green to travel in interstate commerce from the Commonwealth of Pennsylvania to the State of New York, within the Eastern District of New York, and did cause the facilities of interstate commerce, including the mails, to be used, with intent to promote, manage, establish, carry on and facilitate the promotion, management, establishment, and carrying on of an an unlawful activity,

and to distribute the proceeds of an unlawful activity, said unlawful activity being the crime of extortion in violation of the laws of the State of New York." That comes under Section 1952 of the Federal Code which says: "Whoever travels in interstate commerce or uses any facility in interstate or foreign commerce including the mail with intent to distribute the proceeds of any unlawful activity or otherwise promote, manage, establish, carry on or facilitate the promotion, management, establishment and carrying on of any unlawful activity and thereafter performs or attempts to perform any of the acts specified in the paragraphs I've just read shall be fined or imprisoned. Again, I won't go into the extent of punishment.

Paragraph b as used in this section, unlawful activity means bribery or extortion in violation of the laws of the state in which committed or of the United States. The first count relates to extortion in violation of Federal law.

The second count relates to the use of interstate commerce in connection with extortion under New York law. Here, again, there are three elements.

First, the use of interstate facilities or the mail.

Second, the violation of New York law which also relates to fear or use of public office and,

Third, the distribution of proceeds or the facilitation of extortion.

Interstate travel indicates, of course, travel between one state and another and telephone lines are facilities of interstate commerce and the mails are facilities of interstate commerce.

The New York law, Section 155.05 of the Penal Law which took effect in 1965 and was in effect at the time of these activities says with respect to extortion: "A person obtains property by extortion when he compels or induces another person to deliver such property to himself or to a third person by means of instilling in him a fear that, if the property not so delivered, the actor or another will: Use or abuse his position as a public servant by performing some act within or related to his official duties, or by failing or refusing to perform an official duty, in such manner as to affect some person adversely; or Perform any other act which would not in itself materially benefit the actor, but which is calculated to harm another person materially with respect to his health, safety, business, calling, career, financial condition, reputation or personal relationships.

A public servant, as defined by the New York State Penal Law, is any public official or employee of the state or any political subdivision thereof.

And Nassau County is a political subdivision and the Board of Elections is a public agency of the County of Nassau.

The government need not establish that Mr. Christenfeld was performing or failing to perform any act relating to his official duties, but simply prove that the defendant's words instilled in Samuel Green and Green Engineering Company a fear that if the money was not delivered some other public servant or public servants over whom Mr. Christenfeld exercised influence would fail or refuse to perform an official act concerning the awarding of personal service sewerage contracts, unless the money was delivered to Christenfeld.

In this connection, you can take into consideration all the facts and circumstances of the conversations between Green and Christenfeld, if you find they took place and the influence which Mr. Christenfeld is suggested by the evidence to have had and what Mr. Green reasonably perceived or believed Mr. Christenfeld's power to be.

When we talk in terms of wrongful use of fear, the

question is not so much what caused the victim's fear as whether or not the defendant played upon that fear. The law does not say that only certain words may be used to constitute the crime of extortion. The threat may be induced by innuendo or by suggestion.

Again, if money were obtained only as a voluntary contribution or donation and not induced by the fear of economic loss or the threatened action of a public servant as I mentioned before then, under New York State law, you cannot find extortion even though if it were charged you could have found bribery, which is the conferring of a benefit upon a public servant with the understanding that a public servant will be influenced in performing his duties.

With respect to the third element, the distribution of the proceeds or the facilitation of extortion, I don't think I have to say much. The evidence, if you believe it would indicate that there was travel and mail and telephone between Mineola and Pittsburgh with respect to the transmission of money both for contributions to the Nassau Democratic Party and with respect to payments to Mr. Pelz and Mrs. Mrozack.

There is a considerable overlap between count one and count two, and it would have been possible,

perhaps, for the government to have indicted only under one count or the other; I think they used multi counts because they were never sure what the evidence would actually show at the trial. And certainly I am not compelled, if you were to convict on both counts, to punish separately on both counts. The Judge is supposed to use common sense and discretion in determining what penalty to impose when there is a guilty verdict.

Now the third count is a different one, and this is the conspiracy to defraud the United States with respect to income tax returns and it is again rather a long one but I think I have to read it.

Count Three, first, the allegations of Count One, the long conspiracy count, are realleged and incorporated herein.

Then: "2. In or about and between March, 1970 and February, 1973, both dates being approximate and inclusive, in the Eastern District of New York and elsewhere, Marvin D. Christenfeld, the defendant, Samuel J. Green, named herein as a co-conspirator but not as a defendant, and others known and unknown to the Grand Jury, wilfully, knowingly, and unlawfully did combine, conspire, confederate and agree together and

with each other to defraud the United States by obstructing and hindering the Internal Revenue Service in the ascertainment and collection of information used in assessing and collecting taxes, and in the collection of taxes, and by making false, fictitious and fradulent statements in connection with the preparation and filing of documents submitted and filed with the Internal Revenue Service.

"3. It was a part of said conspiracy that Marvin D. Christenfeld, the defendant, would cause Samuel J. Green, named herein as co-conspiratory but not as a defendant, and others known and unknown to the Grand Jury, to pay the sum of $500 a month to Harry Peltz, Jr., Esq.

"4. It was further part of said conspiracy that the aforesaid payments, which totaled approximately $17,500, would constitute partial payment of the aforesaid sum of $40,000 which Christenfeld had unlawfully demanded from Samuel J. Green, named herein as a co-conspirator but not as a defendant. During the course of the aforesaid conspiracy, Harry Peltz, Jr., Esq., performed no legal work for Green Engineering Company or Samuel J. Green Associates.

"5. It was further a part of said conspiracy that

Marvin D. Christenfeld, the defendant, and Samuel J. Green, named herein as a co-conspirator but not as a defendant, and others known and unknown to the Grand Jury, combined, conspired, confederated and agreed that the aforesaid payments of $500 to Harry Peltz, Jr., Esq., would be falsely, fictitiously and fraudulently claimed as ordinary and necessary business expense deductions on the Federal Income Tax Returns filed by Green Engineering Company, whereas in truth and in fact, as the aforesaid defendant and the co-conspirators well knew, such payments could not be claimed as ordinary or necessary business expenses of said corporation, thereby obstructing the Internal Revenue Service in the ascertainment, assessment and collection of information used in assessing and collecting taxes, and in the collection of taxes.

"6. It was further a part of said conspiracy that Marvin D. Christenfeld, the defendant, and Samuel J. Green, named herein as a co-conspirator but not as a defendant, would conceal the existence of the conspiracy and would take steps to prevent disclosure of their activities.

"Overt Acts

"In furtherance of, and to effect the objects of

said conspiracy, Marvin D. Christenfeld, the defendant, and Samuel J. Green, named herein as a co-conspirator but not as a defendant, committed the following overt acts, among others, in the Eastern District of New York and elsewhere:

"1. In or about and between March, 1970 and February, 1973, both dates being approximate and inclusive, Green Engineering Company caused monthly payments of $500 to be made to Harry Peltz, Jr., Esq.

"2. Green Engineering Company filed Federal Corporate Income Tax Returns for the fiscal years ending March 31, 1971, March 31, 1972 and March 31, 1973."

(continued next page)

Now this involves another section of the Internal Revenue Code -- of the Criminal Code, Section 371, which says that:

"If two or more persons conspire either to commit any offenses against the United States or to defraud the United States, and one or more of such persons do any act to affect the object of the conspiracy, each shall be fined or imprisoned or both."

And again I don't go into the amounts of the fines that may be involved.

Here there are three elements necessary, again first that there be two or more persons involved. There is only one defendant, Mr. Christenfeld, but Mr. Green is alleged to have conspired with him, and perhaps Mr. Zelouf did too. At any rate that would constitute the two conspirators, if you find that from the facts.

Secondly, that there be an agreement to defraud;

And, third, that there be what we call an overt act.

With respect to the agreement to defraud, the agreement doesn't have to be in writing, it doesn't mean that the defendant and Mr. Green sat around a table and entered into some pact in writing. Normally a conspiracy is secret in its origins and in its

execution. It is enough for the government to prove beyond a reasonable doubt that Mr. Christenfeld came to a mutual but tacit understanding with Mr. Green that he would accomplishthe unlawful objectives. It is not necessary for the government to prove that each alleged party to the agreement knew the names and the functions of every other participant.

Proof of knowledge and intent to defraud does not have to be made by direct evidence, the intent can be shown by circumstantial evidence or by permissible inferences or deductions from the facts.

Common design is the essence of conspiracy and that can be shown by concert of action.

In determining whether there is a conspiracy, you have to consider the acts of the defendant himself. In order to show whether Mr. Green and Mr. Christenfeld agreed on something, you can take only the testimony of Mr. Green concerning his conversations with Mr. Christenfeld, if you find that there was an agreement. Then you can use the later acts, the testimony for instance of Mr. Friedman with respect to payments that he made in pursuance of that agreement as corroboration and as proof of what we call the overt act.

Then again the law assumes every man to intend

the natural consequences which one standing in his circumstances and possessing his knowledge would reasonably be expected.

So you can determine if you are satisfied that Mr. Christenfeld told Mr. Peltz, You are going to go on the payroll for monthly retainers from Mr. Green or from Green Engineering Company, you can determine whether that indicates that Mr. Christenfeld expected and intended that the payments from Green to Peltz would be deducted as ordinary and necessary business expenses on the Green Engineering Company's income tax returns and whether he anticipated that Mr. Peltz would be doing any work for Green Engineering Company.

The guilt of an individual conspirator is not determined by the extent of his participation. The fact that Mr. Green may have had only one or two conversations about it and all the rest of the activities, that is checks that were passed between Green Engineering and Mr. Peltz, this would not affect Mr. Green's guilt unless you find that he was initially a part of the conspiracy.

Each member of the conspiracy may perform separate and distinct acts. But the government must prove beyond a reasonable doubt that Mr. Christenfeld

knew of their purpose, that the common purpose was criminal in nature, and that he was a willing and knowing participant with the intent to advance the purpose of the conspiracy.

Now the fact that Mr. Green and Mr. Christenfeld met doesn't prove conspiracy. We don't have guilt by association. You cannot convict a person just because he was at a place where the crime took place, you have to base it on your findings, as to what actually happened between Mr. Green and Mr. Christenfeld and Mr. Peltz.

The third count charges that Mr. Christenfeld acted knowingly and wilfully. I have a couple of definitions here.

An act is done knowingly if it is done voluntarily and intentionally and not because of mistake or accident or some other innocent reason.

An act is done willfully if it is done voluntarily and intentionally and with the specific intent to do something the law forbids, that is to say with bad purpose either to disobey or to disregard the law.

So your third count would require a finding that Mr. Christenfeld did in fact intend that payments to Mr. Peltz be deducted on the Green Engineering income

tax return without Mr. Peltz doing any work for Green Engineering Company.

Now I spoke about an overt act.

Just agreeing to do something isn't enough; there has to be something done in pursuance of it. I read two overt acts which are charged, first the payments from Green to Peltz and second the Green Engineering Company tax returns. An overt act means simply an act, whether it is criminal in itself or not, that was intended and done to help carry out the conspiratorial agreement. That even if the act is criminal and was performed by a co-conspirator, if it were not in furtherance of the agreement and if it were an act for his own personal purposes it would not apply; the requirement of the overt act is needed, it is needed to convict the defendant and if it is lacking you must acquit.

The same rule applies with respect to count three, the government must establish all three elements, that there were two or more people, that there was an agreement to defraud the United States and that there was an overt act. Each of those must be established beyond a reasonable doubt and you cannot infer one from the other.

Those are the long counts, and now we come to count four.

Well, count four is a long one, however, I am not going to read all of count four, it is about like count three except that it refers to Olga Mrozack.

"It was part of said conspiracy that Marvin D. Christenfeld, the defendant, would cause Samuel J. Green, named herein as a co-conspirator but not as a defendant, and others known and unknown to the Grand Jury to place Olga Mrozack, the personal secretary of Marvin D. Christenfeld, the defendant, on the payroll of Green Engineering Company, and make payments of $50 a week to said Olga Mrozack.

And four:

"It was further a part of said conspiracy that the aforesaid payments, which totaled approximately $6,000, would constitute partial payment of the aforesaid sum of $40,000 which Marvin D. Christenfeld, the defendant, had unlawfully demanded from Samuel J. Green, named herein as a co-conspirator but not as a defendant. During the course of the aforesaid conspiracy, Olga Mrozack performed no work for Green Engineering Company or Samuel J. Green Associates."

Now the overt acts, the overt acts are substantially

the same. The first one is:

"In or about and between July 1970 and January 1973, both dates being approximate and inclusive, Green Engineering Company caused bi-weekly payments to be made to Olga Mrozack."

Now the second is that the Green Engineering Company filed the same income tax return which I described in connection with count three.

The same three elements must be established here and they are:

That there were two or more people, that there was an agreement to defraud the United States and that there was an overt act.

If Mr. Christenfeld was justfinding Olga Mrozack a moonlighting job so she could get a little extra salary, well, that is not an agreement to defraud the United States. But as I recall Mrs. Mrozack's testimony it was not that Mr. Christenfeld told her to go and see Mr. Green, to go over to Green Associates, I think he told her, as she told you, You will be getting a check from Green Engineering, and she got checks through Pittsburgh. Now was she going to work for Green Engineering Company? You have to determine, you will have to determine whether this was a conspiracy to put Miss Mrozack on the Green

Engineering Company payroll and to provide her with an increase in her salary as secretary and not to provide her with legitimate other work. Bear in mind all the testimony that there was with respect to the time that Mrs. Mrozack spent in her relations between herself and Mr. Christenfeld.

AGAIN you have to find all the three elements beyond a reasonable doubt, you can't infer one from the other.

Now there is one more type which came in count five, and that is not quite the same. Count five starts by saying that the allegations of counts one, two, three and four of this indictment are realleged and incorporated herein.

Then, two: "In or about and between March 1970 and June 1970, both dates being approximate and inclusive, within the Eastern District of New York, pursuant to the plan and purpose to commit the crimes set forth in count one, two, three and four of this indictment, Marvin D. Christenfeld, the defendant, did wilfully, knowingly and unlawfully aid and assist in, counsel and advise Green Engineering Company to prepare and present to the Internal Revenue Service a corporate income tax return forthe fiscal year ending March 31, 1971, which

was false and fraudulent as to material matters in that said return included certain payments to Olga Mrozack as salary and wage expenses, and certain payments to Harry Peltz, Jr., as professional services, whereas, as the defendant Marvin D. Christenfeld well knew, these payments could not be claimed as, and were not ordinary and necessary business expenses, but were in fact payments to an employee of the Nassau Democratic County Committee in the case of Olga Mrozack, the defendant's personal secretary, and payments to the defendant's law partner in the case of Harry Peltz, Jr., for which said individuals performed no services for Green Engineering Company or Samuel J. Green Associates."

(continued next page)

Now, this count to some extent overlaps the other counts and almos repeats one of the overt acts in the conspiracy. But the Government is entitled to present to you several variations of the statutes that are affected, and I will have to read them and then I will decide if there are convictions on more than one count what the penalty should be.

This count charges a violation of Section 7206, subdivision (2) of Title 26 of the United States Code, which is the Internal Revenue Code, and that says:

"Whoever willfully aids or assists in or procures, counsels or advises the preparation or presentation under or in connection with any matter arising under the Internal Revenue laws of a return, affidavit, claim or other document which is fraudulent or false as to any material matter, whether or not such falsity or fraud is with the knowledge or the consent of the person authorized or required to present such return, affidavit, claim or other document, is guilty of a crime."

One difference between count five and counts one and two is that, whether there was an extortion or the misuse of public office or not, there could be a violation of the income tax laws in assisting

in or procuring, counseling or advising that Mrs. Mrozack or Mr. Pelz be put on the Green payroll with the knowledge and intent that they do not do any work for what they were getting.

There are a few things I will have to give you on this.

Now I have read you 371. There are two elements on this: the first, that the tax returns in question were false or fraudulent as to a material matter, and the second that the defendant knowingly and willfully aided or assisted in the preparation of the tax returns or counseled or advised. There was one tax return put in evidence and Mr. Christenfeld's signature was not on it; but you don't have to find that, if at the time that he talked with Mr. Green he suggested that this could be deducted: that would be counseling or advising in violation of the statute.

Now it has been suggested that Mr. Green knew all about this beforehand, and that may well be. But that would not prevent Mr. Christenfeld from being guilty of counseling or advising if infact he did talk with Mr. Green about the fact that this was one way he could make a contribution to the Democratic

Party which would help meet the commitment that was alleged to have been extorted, or if there was any other purpose, because extortion is not a necessary element of this, the point being that a false return is one that was untrue when made and was known to be untrue either by the person making it or the person causing it to be made.

The test as to materiality is one that relates to the relative amounts, and even though the Green Engineering Company had large income, you can look at the return, and if you find there was $24,000 to Mrs. Mrozak and Mr. Pelz which should not have been deducted on these three returns, then you can find that that is a material falsehood.

(Continued on next page.)

THE COURT: (Continuing) The same problem, intent, comes in here: Intent ordinarily is not proved directly because there is no way of scrutinizing the operation of the human mind. But you may infer the defendant's intent from the surrounding circumstances. You may consider any statements made by a defendant, and all other facts and circumstances in evidence which indicated state of mind. It is ordinarily reasonable to infer that a person intends the natural and proper consequences of acts knowingly done or knowingly omitted.

Now again, both elements must be found that the tax return was material and that Mr. Christenfeld advised or counseled or assisted in connection with that.

Now, I get to the last three counts which are essentially repetitious. Count 6 is like count 3. Count 6 is a count relating to Herbert Pomerantz, a conspiracy count, which charges: In or about and between December 1969 and April 1972, both dates being approximate and inclusive, Marvin D. Christenfeld, the defendant, and Herbert Pomerantz, named herein as a co-conspirator but not as a defendant, willfully, knowingly and unlawfully did combine, conspire, confederate and agree together with each other to

defraud the United States by obstructing and hindering the United States Internal Revenue Service in the ascertainment and collection of information used in assessing and collecting taxes, and this charge is that it was part of a conspiracy that Marvin Christenfeld would cause Herbert Pomerantz to place Donald Noonan and Albert Myers, individuals associated with and working on behalf of the Nassau Democratic County Committee, on the payroll of the firm of Herbert Pomerantz, consulting engineer. And they would be falsely claimed as ordinary business expenses. And then six overt acts are alleged, the first, that in or about and between September 1969, and December 1969, both dates being approximate and inclusive, Marvin D. Christenfeld, the defendant, and Herbert Pomerantz, named herein as a co-conspirator, not as a defendant, met at 240 Mineola Boulevard, Mineola, New York; second, that in or about January 1970, Albert Myers was placed on the payroll of the engineering firm of Herbert Pomerantz, consulting engineer; three, that in or about June 1970, Marvin D. Christenfeld, the defendant, and Herbert Pomerantz, met at 240 Mineola Boulevard; four, that in or about June, 1970, Donald Noonan was placed on the payroll of the engineering firm of Herbert Pomerantz, consulting

engineer; five, in or about April, 1971, Herbert Pomerantz filed a federal income tax return for the taxable year 1970; six, in or about April, 1972, Herbert Pomerantz filed a federal income tax return for the taxable year 1971.

And again, there are three essential elements that the Government has to prove on a conspiracy charge. First, that there were two or more persons involved; second, that they agreed to defraud the United States with respect to income taxes; and third, that they performed one or more overt acts. Those I have cited.

Now, count 7 is substantially the same as count 5, I think it is.

Count 7 charges that in or about and between December 1969 and April 1971, Marvin D. Christenfeld, the defendant, assisted Herbert Pomerantz, or counseled or advised him, to prepare and present to the Internal Revenue Service for the year 1970, a false federal income tax return which included payments of approximately $11,000 to Donald Noonan and Albert Myers as salary and wage expenses, whereas as the defendant Marvin D. Christenfeld well knew, these deductions could not be claimed as and were not ordinary and necessary business expenses, but were in fact payment to workers of the

Nassau Democratic Committee for which said individuals performed no services for Herbert Pomerantz.

As I read you Section 7206, Title 26, and I told you about the two essential elements on here, proof there was a fraudulent income tax return in a material matter, and second, there was an assistance, counsel or advice from Mr. Christenfeld to act in that way, count 8 is substantially the same except that it relates to Peter Flack, consulting engineer, and to invoices which Mr. Christenfeld allegedly caused Brooklyn Letter Service, Inc. to forward false and fictitious invoices to Peter Flack, consulting engineer, in an amount of approximately $8,000. And false income tax returns were filed on or about April 15, 1970, which was false and fraudulent as to material matters in that it includes payment of approximately $8,400 to Brooklyn Letter Service, Inc., as office and postage expenses, whereas, as the defendant Marvin D. Christenfeld well knew, this deduction could not be claimed as and was not an ordinary and necessary business expense, but was in fact a political contribution to the Nassau Democratic County Committee.

Those are the eight counts. Each have to be

separately considered. It has taken quite a while to go through them and you haven't had as much fun as when a witness is on the stand and you hear questions and answers, but I think I probably ought to go through with the rest of the charge and then let you go back to the jury room.

Maybe it's a good idea if everybody stood up for a minute and get a stretch before I continue the rest of the charge.

You want a side bar now? All right, we will skip that.

Counsel have a right after I finish charging, if there is anything I said they don't like and they think is wrong, they have an opportunity to bring it to my attention.

Now, I should finish before our normal afternoon break.

On the evaluation of evidence, essentially trying to distinguish credibility is not much different than as I said at the start to what you have to perform right through your lives. Sometimes we make a distinction between direct evidence and indirect evidence. Direct evidence is the testimony of an eyewitness like Mr. Green's testimony of his

conversations with Mr. Christenfeld. Circumstantial evidence is proof of a chain of circumstances that logically point to the existence or non-existence of certain facts.

Mr. Gillen uses circumstantial evidence to suggest that the Government witnesses were not telling the truth and therefore they shouldn't be believed. I am not going to go into detail about that, in a general law and the law makes no distinction between direct and circumstantial evidence. And circumstantial evidence, in order to establish guilt, doesn't have to exclude every reasonable hypothesis of innocence, it is only necessary that the jury be satisfied of a defendant's guilt beyond a reasonable doubt on the basis of all the evidence in the case, both direct and circumstantial.

If they are not so satisfied they must bring in a verdict of not guilty.

In analyzing the evidence, you can draw reasonable inferences on your own common sense and general experience from any facts that you find are proved. You are not confined to the bare bones of the testimony. You don't leave your common sense outside the door when you go back to the jury room to deliberate.

You have to distinguish between inference and fact and guesswork. You can't base your verdict on the basis of suspicion or anything less than actual facts.

Now, when you come to credibility, weigh the testimony of witnesses, you can properly consider the relationship of the witnesses to the Government and to the defendant, their bias or interest in the outcome of the case, their manner while they were testifying, their candor, and intelligence as you have observed it. You consider the probability or improbability of the testimony in relation to other testimony in the case. And you don't have to believe uncontradicted testimony. You consider the extent to which any testimony has been corroborated or contradicted by other credible evidence. You consider inconsistencies within the testimony of any witness either on direct or cross-examination.

(continued next page)

If a witness has been shown to lie at any stage in this trial or another hearing or in a discussion with Government agents, you can say you don't believe anything the witness testifies about or you can say part of what the witness said on the stand is true and part isn't. That is within the province of the jury -- to separate the wheat from the chaff.

You should consider each witness separately. Where there are inconsistencies in the testimony of a particular witness, that, too, might lead you to disregard his testimony in whole or in part. But you should bear in mind that a witness may have been mistaken or even untruthful with respect to part of his or her testimony and be correct and truthful with respect to other parts.

Most of the facts being described here took place five, six, seven years ago. The Government is allowed five years in an ordinary case and six years in an income tax case within which to bring an indictment.

The case is lawfully before you but it affects the degree of memory and you can determine to what extent that tells for the Government or the defendant in your evaluation of the evidence.

Where you find there has been an inconsistency

you should consider whether it relates to a material or important part of the testimony. Think back on your own experiences and how accurately you can repeat something the second or third time or whether there are differences.

Several of the Government witnesses are what we call accomplices. You heard in the indictment, when I read it, that Mr. Green was described as a co-conspirator but not indicted herein. An accomplice is not incompetent to testify. Sometimes, in fact, the Government has to rely on accomplice testimony in order to prove a case. But the testimony of an accomplice should be viewed with care and received with caution because he has admitted that he himself violated the law.

Under our federal statute, the testimony of an accomplice is enough alone to convict even without corroboration. But you can determine the extent of corroboration and what effect that has.

Sometimes it would be difficult to detect or prosecute some wrongdoers, and this is particularly true in conspiracy cases, and the Government has to take the witnesses as it finds them.

You don't have to accept their testimony. You

are the ones that have to determine with respect to that.

In this case, the Government has also done something which is lawful. It has told witnesses who testified that they participated in the preparation of false income tax returns and in the extortionate contribution or what might be bribery of a public official, and that they won't be prosecuted as to what they testify to.

I think that is what we call use immunity, it means that the witness has some expectation of a personal advantage from testifying here. For that reason you can consider that maybe a little motivation to slant his testimony or even to lie, and you judge whether he is the kind of a witness who would want to tell a lie to send somebody else to jail that didn't belong in jail.

You have to examine the testimony of all the witnesses who are under immunity with somewhat greater care than the testimony of an ordinary witness to see how much his testimony has been affected by interest or prejudice.

Now, the Government also put in some things that were not related directly to this case. The Jackson incident, for instance, was used as what is

called a prior similar act. I have told you one of the things that has to be proven here with some of the counts is that Mr. Christenfeld knew that there was going to be a cheating on income taxes, that he intended the tax returns to be falsified, that items be included in the tax returns which were not necessary and ordinary business expenses.

Mr. Christenfeld is not on trial here for trying to extort anything from Mr. Jackson. He is not on trial here for -- I have forgotten what the other similar act is -- but he is only on trial for the eight counts.

Also, you heard a number of witnesses with respect to the character of Mr. Christenfeld for truthfulness. Character evidence is permitted because it may be unlikely that a man who is so truthful would be guilty of a crime with which he is charged. You can use character witness in and of itself to establish a reasonable doubt. But you should consider it in connection with all the evidence in the case and see the extent to which it may affect your judgment.

(continued next page)

THE JUDGE: (Continuing) Finally, on this phase, the number of witnesses does not make any difference, or the length of the witnesses. I think we had ten Government witnesses counting the character witnesses and we had all told, twelve witnesses, counting the defense's cross-examination of the witnesses took less time than the Government's. Your job is to consider the quality of the evidence, not the quantity and determine just where that leads you with respect to those several counts that are before you.

A Federal Judge has the right to comment on the evidence, but the time is running and you have heard so recently the views of both the Government and the defendant that I am not going to do that. I will simply point out that the fact I may have mentioned a few items in connection with my discussion of the law does not mean that I have tried to cover the waterfront or that I have tried to indicate any ideas whether the defendant is guilty or not guilty. You can consider all the evidence in the case.

Now, a few words about reaching a verdict. Your verdict must be unanimous on each count. That means you all must agree. I suggest that you discuss the evidence rather fully before taking even a tentative

vote so that nobody jumps to a hasty conclusion before you study the entire case.

Your recollection of the evidence governs. Whatever counsel may have said or what I may have said doesn't count. You must follow my instructions on the law, but you must follow your own recollection of the evidence.

If there is some testimony you want to have verified, you can make the request. We'll look it up and call you in and have it read to you.

If you want to look at any of the exhibits, just send in for them. The Clerk will have the Marshal take them in.

When you go into the jury room, Mrs. Wallace acts as foreman. She will try to see to it that everybody gets the chance to talk and so you can hear each other and not too many people talking at the same time. As I said before, her vote is one vote. You all must agree.

You're supposed to talk with each other. Nobody must give up a conscientious view just in order to reach agreement. It's wise to consider the reasonableness of the views that other jurors may have if they differ from yours, but this has to be a unanimous verdict and the majority can't put any screws on the minority even if

it's a minority of one.

You should report a verdict on all counts and your verdict doesn't have to be consistent. You can find guilty on one count and not guilty on another.

When you've reached a verdict, the foreman simply gives the Marshal a note saying you reached a verdict. When you come in I'll ask Mrs. Wallace to announce the verdict orally and either party can have the jury polled, which means that each of you is asked whether it is in fact your verdict so that we know that it is unanimous or whether it is unanimous.

One juror disagreed after a vote was announced so I hope you know what you're doing today.

In determining guilt or innocence, don't give consideration to the matter of punishment. That's exclusively my responsibility if the defendant is found guilty on any counts. There will be a Marshal available outside the jury room to let the Court know if there are any questions you want to have answered or any part of the charge you want to have further explained.

I leave it somewhat in the hands of the jury how late they wish to stay. I would suggest, though, if you not reached a verdict by about 5:30, you can ask if you have want to be excused until tomorrow and I'll abide by your

majority vote on that. Your vote on each count must be unanimous.

I may call you back again for corrections or additions to the charge or assuming I may not, I will remind you of the oath you took at the beginning; that without fear or favor to any man you will well and truly try the issues between the parties according to the evidence heard by you in the Court and the laws of the United States.

I thank you for your attention, your consideration and your diligence because you are all 16 here in the middle of the second week. I'm sorry I have to excuse the four alternates. You can take your wraps, your cards and go downstairs.

I will ask the Clerk to swear in the Marshal who will keep the jurors in his custody until they've reached a verdict.

(Two marshals sworn.)

THE COURT: Mr. Torres, Mr. Duffy, Mr. Cunningham and Mr. Anderson, you are all excused.

JUROR NO. 3: That's a shame; thank you Judge.

(Said alternate jurors excused.)

THE COURT: I have frequently needed alternates in a shorter trial. Counsel behaved very efficiently

in this case and we're through a little earlier than I was perhaps anticipating.

You can go back to the jury now with the Marshal, please. Just don't discuss it yet.

(Jury leaves courtroom.)

THE COURT: This was a long indictment with a lot of statutes. I don't know when I've taken over an hour for a charge before.

Are there any exceptions, Mr. Kaplan?

MR. KAPLAN: I believe there are. They're really not exceptions. There was something that was left out of the charge, most respectfully, concerning 371 count, conspiracy to defraud the Government. The charge, the actual charge on what it is to defraud the Government or to conspire to defraud the Government which is Government's request number three. I believe that is an essential -- 23; that is an essential element of the defense which has to be charged, your Honor.

THE COURT: That was request number three? I read that.

MR. MARCUS: Twenty three.

MR. KAPLAN: Twenty three.

THE COURT: I thought I gave the substant -- I said yesterday I would give the subtance.

MR. GILLEN: I thought you did, your Honor.

JUDGMENT AND COMMITMENT

M'FILMED

FILED

United States of America vs.

United States District Court for Eastern Dist. of NY

A 355

DEFENDANT: MARVIN D. CRISTENFELD

DOCKET NO.: 75 CR 896 (s)

JUDGMENT AND PROBATION/COMMITMENT ORDER

COUNSEL

In the presence of the attorney for the government the defendant appeared in person on this date → MONTH 6 DAY 24 YEAR 1976

[ ] WITHOUT COUNSEL However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

[X] WITH COUNSEL Michael Gillen, Esq. (Name of counsel)

FILED IN CLERK'S OFFICE U.S. DISTRICT COURT E.D. N.Y. JUN 24 1976 TIME A.M. P.M.

PLEA

[ ] GUILTY, and the court being satisfied that there is a factual basis for the plea, [ ] NOLO CONTENDERE, [X] NOT GUILTY

FINDING & JUDGMENT

There being a finding/verdict of [ ] NOT GUILTY. Defendant is discharged [X] GUILTY. (counts 1 to 8 incl.)

Defendant has been convicted as charged of the offense(s) of violating T-18, U.S.C.Secs.371,1951, 1952 and T-26, U.S.C.Sec 7206(2) in that in or about and between Sept. 1969 and June 1973, both dates being approximate and inclusive, the defendant, did knowingly, wilfully and unlawfully , conspire with others, to obstruct, delay and affect commerce and the movement of articles , equipment , supplies and labor, by attempting to obtain money from others, with the consent for such payment having been induced by the wrongful use of fear of economic loss and under color of official right

SENTENCE OR PROBATION ORDER

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of

one year to run concurrent on all counts. Defendant to serve 6 months and execution of balance of sentence is suspended and defendant is placed on probation pursuant to T-18, U.S.Code, Sec. 3651. Defendant fined $2,000. Execution of/stayed 10 days or if notice of appeal is filed execution stayed pending appeal. On motion of Asst. U.S.Atty. Kaplan underlying indictment is dismissed.

Sentence

SPECIAL CONDITIONS OF PROBATION

ADDITIONAL CONDITIONS OF PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

COMMITMENT RECOMMENDATION

The court orders commitment to the custody of the Attorney General and recommends,

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

SIGNED BY

[ ] U.S. District Judge

[ ] U.S. Magistrate

Date June 24, 1976

BEST COPY AVAILABLE

NOTICE OF APPEAL

UNITED STATES DISTRICT COURT

A 356

EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

v.

MARVIN D. CHRISTENFELD

Docket Number 75 CR 896(S)

Hon. Orrin G. Judd
(District Court Judge)

NOTICE OF APPEAL

Notice is hereby given that Marvin D. Christenfeld appeals to the United States Court of Appeals for the Second Circuit from the [X] Judgment [ ] order [ ] other (specify) _____ entered in this action on June 24, 1976 .
(Date)

GRUNEWALD, TURK, CILLEN & CALIENDO
(Counsel for Appellant)

Address
233 Broadway
New York, New York 10007

Date June 28, 1976

To:
United States Attorney
Eastern District of New York

Clerk, U.S. Court of Appeals
Second Circuit

Phone Number (212) 964-1400

ADD ADDITIONAL PAGE IF NECESSARY Marvin D. Christenfeld

(TO BE COMPLETED BY ATTORNEY) TRANSCRIPT INFORMATION – FORM B

➤ QUESTIONNAIRE	➤ TRANSCRIPT ORDER	➤ DESCRIPTION OF PROCEEDINGS FOR WHICH TRANSCRIPT IS REQUIRED (INCLUDE DATE).
[ ] I am ordering a transcript [X] I am not ordering a transcript Reason: [X] Daily copy is available [ ] U.S. Attorney has placed order [ ] Other. Attach explanation	Prepare transcript of [ ] Pre-trial proceedings [ ] Trial [ ] Sentence [ ] Post-trial proceedings	

The ATTORNEY certifies that he will make satisfactory arrangements with the court reporter for payment of the cost of the transcript. (FRAP 10(b)) ➤ Method of payment [ ] Funds [ ] CJA Form 21

ATTORNEY'S signature Grunewald, Turk, Cillen & Fordham | DATE 6/28/76

➤ COURT REPORTER ACKNOWLEDGEMENT

To be completed by Court Reporter and forwarded to Court of Appeals.

Date order received	Estimated completion date	Estimated number of pages.

Date _____ Signature _____
(Court Reporter)

ORIGINAL

Service of three (3) copies of the within
is admitted this 9th day of August 1976

United States Attorney
for the Eastern District of New York
Attorney for Appellee

RECEIVED
U.S. ATTORNEY
AUG 9 11 03 AM '76
EAST. DIST. N.Y.